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## **EXTRAORDINARY**

PART II—Section 3

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ELECTION COMMISSION, INDIA

In the first place, it is alleged, there was no valid Electoral Roll at the by election. Thousands of voters, whose names were on the electoral roll first prepared in 1951, were not to be found in the so-called electoral roll of 1952. Thousands of persons living in Allahabad and qualified to be voters were left out from the Electoral Roll of 1952. Various provisions of the Representation of Peoples Act, 1950, Representation of Peoples (Preparation of Electoral Rolls) Rules, 1950, and instructions issued by the Chief Electoral Officer, U.P. from time to time were not followed in preparing the revised Electoral Rolls of 1952. Votes of persons, who were either dead or absent from Allahabad on 3rd May 1953, were improperly accepted. A number of workers of the returned candidate obtained ballot papers in the names of other voters, some of whom are dead, or have migrated to Pakistan, or are still living in India, and voted for the returned candidate in the name of such voters.

Again, authorities failed to maintain law and order in the Constituency in general and at the polling stations in particular. The petitioner and his workers and supporters including women were molested, abused, assaulted and injured by ruffians organised by the returned candidate. There was no check by the police or the Election authorities upon such rowdyism. There was an atmosphere of terror, a election was impossible. The corrupt practice of undue influence extensive the by-election. Respondent No. 1, his agents and workers physice red petitioner's supporters. Undue influence was also and the supporter and supporters.

The pleadings of the parties gave rise to the following issues:-

- (1) Whether the Electoral Roll used in this election was invalid for reasons given in paragraphs 3, 4 and 5 of the petition?
- (2) Whether the validity of an electoral roll can be challenged in an election petition?
- (3) Whether there was improper acceptance of votes for person, who were either dead, or absent from Allahabad, as detailed in Schedule 'A'? If so, was the result of the election materially affected?
- (4) Whether the petitioner, his workers and supporters and electors were molested, abused, assaulted and injured by workers and supporters of respondent No. 1, as detailed in Schedule 'B'?

Whether there was no free election due to an atmosphere of terror?

- (5) Was there no free election as explained in paragraphs (8) and (9) of the petition, read with Schedules 'C', 'D', 'E', 'F', & 'G'?
- (6) Whether respondent No. 1, his workers and agents used threats and exercised undue influence as detailed in Schedule 'C'?
- (7) Were respondent No. 1, his workers and agents guilty of personation as detailed in Schedule 'H'?
- (8) Whether Respondent No. 1, his workers and agents made and published statements as detailed in Schedule 'D'? Whether such publication amounts to a major corrupt practice under section 123(5), R.P. Act 1951?
- (9) Whether Respondent No. 1, his workers and agents hired or procured conveyances for electors as detailed in Schedule 'I'?
- (10) Whether Respondent No. 1 procured the assistance of person serving under the State as detailed in Schedule 'J'?
- Whether the two persons specified in the Schedule persons serving under the State?
- (11) Did the returned candidate, his agents and workers canvass on religious and communal lines as detailed in Schedule 'F'?
- (12) Did respondent No. 1 distribute leaflets detailed in Schedule 'K' (paper No. 4 of list 26-C)?
- (13) Did Respondent No. 2 publish false statements as detailed in Schedule 'D'?
- (14) Did Respondent No. 2, his agents and workers exercise undue influence as detailed in Schedule 'F'?
- (15) Whether Respondent No. 4 was wrongly impleaded in the election petition? Is he entitled to costs?
- (16) Whether Respondent No. 1 took precautions to prevent illegalities and irregularities? If so, its effect?
- (17) To what relief, if any, is the petitioner entitled?

Since Sri Kalyan Chand Mohiley, respondent No. 1 is the principal respondent opposing the election petition, it will be convenient to refer to him as the respondent.

### FINDINGS

Issue No. 2.—This was taken up as a preliminary issue involving a pure question of law. We decided issue No. 2 on 16th December 1953. We attach to this judgment a copy of our order dated 16th December 1953 as appendix 'A'.

Issue No. 1.—In paragraph 3 of the petition. It has been alleged that there existed no valid electoral roll. In paragraph 4 of the petition it has been alleged that, names of thousands of voters, whose names appeared on the electoral roll first prepared were not to be found in the revised electoral roll used in the by-election. Again, the names of thousands of voters, who were either dead or not living in Allahabad, were included in the revised electoral roll. According to paragraph 5 of the petition, certain rules and instructions were ignored at the time of the preparation of the revised electoral roll.

Under issue No. 2 we pointed out that, the validity of electoral roll cannot be challenged in an election petition except as provided in sub-section (2) to (5) of Section 62 R.P. Act, 1951. The alleged defects mentioned in paragraphs 4 and 5 of the petition are not covered by sub-sections (2) to (5) of section

62 R.P. Act, 1951. So even these alleged defects would not have rendered the electoral roll invalid. Some evidence was produced to show that certain persons, whose names appeared in the electoral roll, were either dead or out of Allahabad. No evidence was produced to show that rules and instructions were violated at the time of the preparation of the revised electoral roll. We hold that the electoral roll used in the by-election was not invalid.

Issue No. 3.—There is some evidence to show that, certain persons, whose names appear on the electoral roll, were either dead or absent from Allahabad. But it was not brought to our notice that, somebody went to the polling station, and cast votes for persons who were either dead or absent from Allahabad. The petitioner has failed to prove that, there was improper acceptance of votes as alleged. So the latter part of issue No. 3 does not arise.

Issue No. 6.—This issue has to be read with schedule 'C' attached to the petition. A number of incidents, which took place on or before the polling day, have been described in fourteen paragraphs of schedule 'C'. The various incidents may now be discussed one by one.

Paragraph 1 of schedule 'C' relates to an incident which took place on the polling day at Tonga Stand Polling Station. It is alleged that, Sri Sheo Kumar Pande was working as petitioner's agent at this Polling Station. A number of Praja Socialist Party workers led by respondent's brother, Kamla Prasad Mohiley alias Kunnan, Salig Ram Jaiswal, Daya Shankar Malviya, Misri Lal Jaiswal, Advocate and Mohammad Taqi Advocate assaulted Sri Sheo Kumar Pande. This assault created panic at the Polling Station. Voters, who were petitioner's supporters, went away terrified. Other supporters of the petitioner did not go to the Polling Station to cast their votes due to fear.

The petitioner produced eight witnesses to prove this incident. Chunni Lal (P.W. 8) stated that he went to Tonga Stand Polling Station to cast his vote. P.S.P. workers started shouting slogans directed against Sri Sheo Kumar Pande. P.S.P. workers started shouting slogans directed against Sri Sheo Kumar Pande. A young man caught hold of Sri Sheo Kumar Pande, and threw him at the root of a tree. Chunni Lal witness is the owner of Kailash Type Foundry. Last year he paid Rs. 2,000 as Income-tax. He is a neighbour of Sri Sheo Kumar Pande. Chunni Lal is an old Congressman, and a member of the Ward Congress Committee. Chunni Lal said that he used to be mostly in the group of Sri B. N. Pande, Abdul Rauf (P.W.37) stated that he was working at Tonga Stand Polling Station, and was sending voters from the Congress camp to the Polling Station. At 10 a.m. some people rushed to the Congress camp saying that, Sri Sheo Kumar Pande had been badly beaten. So voters ran away. The witness did not see Sri Sheo Kumar Pande being beaten. Anurudh Narain Singh (P.W.38) was working as petitioner's polling agent at Tonga Stand Polling Station. He cannot name the P.S.P. men present in the crowd, which assaulted Sri Sheo Kumar Pande. The witness canvassed for the Congress candidate. It may be was working as petitioner's poining agent at longs static longing station. He cannot name the P.S.P. men present in the crowd, which assaulted Sri Sheo Kumar Pande. The witness canvassed for the Congress candidate. It may be mentioned here that, Sri B N. Pande petitioner was the Congress candidate, while Sri Kalyan Chand Mohiley respondent No. 1 was the candidate set up by the Praja Socialist Party. Sheikh Ghulam (P.W.46) stated that he started in the morning to cast his vote at Tonga Stand Polling Station. At 10-30 a.M. he saw a crowd running. So he came away. At 1 P.M. a police lorry went about giving assurance to the public that, there was peace at the Polling Station. The witness has no personal knowledge about the attack on Sri Sheo Kumar Pande. P.W. 48 is Sri Sheo Kumar Pande. He is a Pleader. He worked as petitioner's polling agent at Tonga Stand Polling Station. He described how one person caught him, and threw him at the brick fencing of a tree. Sri Sheo Kumar Pande said that he received injuries on the fingers of his right hand. He arranged for sending a written report to the Kotwali. No complaint was filed in Court. Sri Sheo Kumar Pande has been in the Congress since 1934. Sri Syed Mohammad Taqi (P.W.51) is also a pleader. He too was working as Petitioner's polling agent at Tonga Stand Polling Station. He described how Sri Sheo Kumar Pande was thrown at the fencing made of bricks. Sri Taqi wrote down a report as dictated by Sri Sheo Kumar Pande, because Sri Sheo Kumar Pande was unable to write due to the injury to his right hand. Sri Taqi said that he remained waiting, in case his services were needed at any particular booth. Similarly Sri Sheo Kumar Pande was throw Pande was received at any particular booth. Station remained was unable to write due to the injury to his right hand. Sri Taqi said that he remained waiting, in case his services were needed at any particular booth. Similarly, Sri Sheo Kumar Pande was waiting. It was urged for the respondent that, Sri Sheo Kumar Pande was not entitled to remain within the enclosure of the Polling Station, while the petitioner had other Polling Agents working at all the booths of the Polling Station. Reliance was placed upon Rule 17 of R.P. Rules, 1951. According to Rule 17, the Presiding Officer shall exclude from the polling station or a polling booth every body except contains exclude from the polling station or a polling booth every body except certain persons specified in the rule. According to clause (b) of the rule, each candidate, his election agent, and one polling agent of each candidate may remain at

the polling station or a polling booth. It was therefore contended for the respondent that, Sri Sheo Kumar Pande was not entitled to remain inside the polling station, while the petitioner had a polling agent working at each polling booth. It is true that, Sri Sheo Kumar Pande could not remain inside the polling station as a matter of right. But under clause (e) of rule 17 it is open to a Presiding Officer to admit any person for the purpose of identifying electors or otherwise assisting him in conducting the poll. There is no evidence that, the Presiding Officer had given Sri Sheo Kumar Pande special permission under clause (e) of rule 17. But supporters of rival candidates had no right to use force to eject Sri Sheo Kumar Pande. All that they were entitled to do was to request the Presiding Officer to ask Sri Sheo Kumar Pande to leave the Polling Station. There was no justification for the use of violence against Sri Sheo Kumar Pande. Sri Suraj Bhan Singh (P.W.54) is the Station Officer of Police Station Kotwali. He sald that Sri Sheo Kumar Pande lodged a written report on 3rd May 1953. Sri K. P. Srivastava (P.W.57) is the Deputy Superintendent of Police for Allahabad city. He heard that some incident had occurred at Tonga Stand Polling Station. So he went there. He noticed a crowd there. Some people shouted that police wanted that, people should not vote, but should go back. Sri Srivastava explained over a loud speaker that, that impression was wrong, and that everybody was free to go and vote.

Ex. 32 is the report lodged by Sri Sheo Kumar Pande on 3rd May 1953. The attack on him was described in this report. But names of culprits were not mentioned. The report did not mention that, the men who attacked Sri Sheo Kumar Pande belonged to P.S.P. Names of a number of witnesses were mentioned in the report (Ex.32). Those names were Srimati Satya Prakash, Shamsher Bahadur, Abrar Husain, Abdul Majid, Sri B. N. Kansal Presiding Officer and Syed Mohammad Taqi. From that list of witnesses, Sri Syed Mohammad Taqi alone was produced before the Tribunal.

The respondent produced five witnesses with respect to this incident. According to the petitioner, one Daya Shankar Malviya was among the P.S.P. men, who attacked Sri Sheo Kumar Pande. Daya Shankar Malviya appeared before the Tribunal as D.W.1, and denied having beaten Sri Sheo Kumar Pande, Daya Shankar Malviya supported the respondent in the by-election, and was a member of the Working Committee of Praja Socialist Party. There was one election meeting held at Daya Shankar's house. But Daya Shankar says that he himself was not present in that meeting. According to the petitioner, Sri Salig Ram Jaiswal was among the leaders of the P.S.P. men, who attacked Sri Sheo Kumar Pande. Sri Salig Ram Jaiswal appeared before the Tribunal as D.W.26, and denied that he had any hand in the assault on Sri Sheo Kumar Pande. Sri Jaiswal, however, admitted that he heard next day that, there was some scuffle, and that Sri Sheo Kumar Pande had been injured. Sri S. R. Jaiswal was at one time a member of the Legislature on Congress tlcket. At present he is Chairman of the District Praja Socialist Party. He was convener of P.S.P. Election Board for the by-election. He owns a number of houses, and pays Income-tax. Sri Salig Ram Jaiswal was the main supporter of the respondent in the by-election. Raja Ram Gupta (D.W.31) stated that he went to Tonga Stand Polling Station at about 10 A.M. to cast his vote. He stayed there for about an hour. He found that polling went on peacefully. Sri Sheo Kumar Pande was not assaulted in the presence of the witness. The witness said that he did not notice Sri Sheo Kumar Pande there at all. Amrit Lal (D.W.40) deposed that he reached Tonga Stand Polling Station at 9-45 A.M. to cast his vote, and remained there till 11-15 A.M. Nobody attacked Sri Sheo Kumar Pande during this period. Amrit Lal claims to be a member of Ward Congress Committee. The petitioner was not prepared to admit that, Amrit Lal is a Congress member at all. So the witness brought a receipt to prove his Congress membership. The receipt do

Sri Sheo Kumar Pande 18 a man of some status. His statement on oath is supported by his report (Ex.32) and the statement of another pleader, Sri Mohammad Taqi. We are satisfied that, Sri Sheo Kumar Pande was assaulted at Tonga Stand Polling Station. But the indentity of the man, who attacked him, has not been established. It cannot be definitely stated that, these men were P.S.P. supporters. It is possible that, the man who threw Sri Sheo Kumar Pande at the brick fencing, had some personal grudge against him, or belonged to some other political party. It is necessary to remember that, the petitioner and the respondent No. 1 were not the only candidates at the bye-election. Sri B. N. Pande tried to make out in the petition that a regular force of P.S.P. hooligans

led by Kunnan, Dayalu and others went from one polling station to another and created disturbance. One mode of operation was that they would select some prominent Congress worker at a polling station, and demand his ejectment from there. In this way they came to Tonga Stand at 10 a.m. and demanded Sheo Kumar Pandey's removal, and ultimately used force. If there had been any truth in these allegations, Sheo Kumar Pande would have recognised some of these P.S.P. men in the crowd. He did not name any P.S.P. worker except Kamla Prasad in this connection. This shows that those, who pushed Sri Sheo Kumar Pande, were probably not P.S.P. men. The booth was within fifty paces of the main road. Traffic had not been closed. So anyone could have pushed Sri Pande.

According to paragraph 2 of schedule 'C', there was some disturbance on the polling day at Agarwal Vidyalaya Polling Station. The first part of paragraph 2 of schedule 'C' relates to the alleged attack on Sri Mangala Prasad, Deputy Minister. This part of the case was not pressed on behalf of the petitioner. According to the second part of paragraph 2 of schedule 'C', some two hundred workers belonging to Praja Socialist Party collected at the Polling Station, and started shouting slogans. They did not permit petitioner's supporters to vote for him.

The petitioner produced four witnesses to prove the alleged disturbance at Agarwal Vidyalaya Polling Station. Surya Kant Misra (P.W.1) stated that he visited Agarwal Vidyalaya Polling Station. He heard cries in favour of P.S.P. and against the Congress. Electors, who carried Congress slips, were molested. Congress slips were torn away and P.S.P. slips were thrust upon them. The witness is a Pupil-Teacher studying at Government Training College, Allahabad. He lives at Deaf and Dumb School in Civil Lines. Civil Lines are outside the constituency in question. Agarwal Vidyalaya is at a distance of one and a half miles from Deaf and Dumb School. He was not agent for any party. He had no special reason for visiting Agarwal Vidyalaya Polling Station. He is not even a voter. He said that there were four constables and one police Sub-Inspector at the gate of the Polling Station. At one place he said that, he saw Sri Rai Ram Charan Agarwal and Sri Srinath Pathak working there for the Congress. Later the witness said that, he did not see Rai Ram Charan Agarwal or Sri Srinath Pathak at all. Surya Kant Misra said that one Satya Narain Prasad told the witness that, he might have to give evidence. But Satya Narain Prasad (P.W.3) denied having told Surya Kant Misra that, he would have to give evidence. Ram Narain Lal (P.W.2) was working as Polling Agent at Agarwal Vidyalaya Polling Station on behalf of the petitioner. Ram Narain Lal said that when he protested to the Presiding Officer, the Presiding Officer replied that he was helpless. There was sufficient police force available at the polling station. There should have been no difficulty in controlling the crowd. The witness said that Rai Ram Charan Agarwal and Sri Srinath Pathak were also working as Congress agents at the same Polling Station. Ram Narain Lal gave evidence for the petitioner in another election case against Keshav Misra. The witness had canvassed for the petitioner in the by-election. He is President of a Ward Congress Committee. According to Sri Suraj Bhan

The respondent produced two witnesses with respect to the alleged disturbance at Agarwal Vidyalaya Polling Station. According to the petitioner's evidence, one Satya Narain Pande was among the P.S.P. men, who molested Congress supporters. Satya Narain Pande appeared before the Tribunal as D.W. 12. He was respondent's polling agent at Agarwal Vidyalaya Polling Station. He said that there was no disturbance there. He denied that any P.S.P. worker raised any slogan there, or that any Congress supporter or agent was abused or assaulted by P.S.P. men. Satya Narain Pande is employed in the University Library. He is a member of the District Board. He admits having supported the respondent in the by-election. The witness was dissatisfied with Municipal Administration. The petitioner was Chairman of the Municipal Board. Kanhaiya Lal Misra (D.W.16) is an Advocate. He worked as respondent's Polling Agent at Agarwal Vidyalaya Polling Station. He denied

that P.S.P. workers barricaded the gate, or threatened voters, or raised slogans. Sri Misra said that he is respondent's friend, but not a member of the Praja Socialist Party. He canvassed for the respondent. The witness said that at times crowds collected in front of the gate. Then the police cleared away the crowd. Workers of both the parties used to collect at the gate.

Sri Mangala Prasad, Deputy Minister does not take a serious view of the disturbance at the Polling Station. Neither the Presiding Officer nor the Lady Polling Officer was produced before us. Even Sri Rai Ram Charan Agarwal and Sri Srinath Pathak, who were petitioner's agents there, were not produced by the petitioner. There was no written report made to the Presiding Officer. The petitioner has not been able to prove that, there was any serious disturbance at Agarwal Vidyalaya Polling Station.

Paragraph 3 of schedule 'C' deals with an alleged incident at Kesarwani Vaish Pathashala Polling Station. It is alleged that, certain men of bad character went to the Polling Station, and abused Sri Kailash Narain Gupta, who is President of the City Congress Company agent for the petitioner. Sri K. N. Gupta and Sri Ram Chandra Vanadled by the crowd. These men shouted slogans and threats the property of the petitioner of the petitioner of the crowd. The incident created panic at the Polling persons including women, who wanted to available the petitioner of the peti

The petitioner produced three with the station to cast the station of the respondent to the presence of Kunnan, who is a burney of the presence of Kunnan, who is a burney of the respondent Kunnan gave a push to Sri Kailash Narain. Sri Kailash Larain would have fallen down but for the intervention of Ram Chandra Vaish. This incident is said to have taken place at 11-30 a.m. Banerji stated that he did not cast his vote in the morning. He went there merely to search for his relation. No voter complained to the Presiding Officer about the destruction of cards. The witness has been a Congress member for ten or 12 years. P.W. 12 is Ram Chandra Vaish. He said that he saved Sri Kailash Narain Gupta, when he was pushed by Kunnan. The witness described himself as a social, political and labour worker. He worked for the petitioner in the by-election. He was petitioner's Polling Agent at Kesarwani Pathshala Polling Station. Neither Sri Kailash Narain Gupta nor Ram Chandra Vaish cannot name any voter, who did not go for voting due to disturbances. P.W. 14 is Sri Kailash Narain Gupta. He is President of the City Congress Committee. He used to pay about Rs. 25,000 per annum as land revenue. He worked as petitioner's Polling Agent at Kesarwani Vaish Pathshala Polling Station. He said that Kunnan and his men surrounded him. When the witness protested, Kunnan gave him a push. Sri Kailash Narain was saved by Ram Chandra Vaish. Sri Kailash Narain said that, when he complained to the Polling Agent of the respondent, he turned out unauthorised workers. This sort of thing continued throughout the day. But it was not very disturbing. Sri Kailash Narain noticed seven or eight policemen on duty at the Polling Station. Badshahi Mandi police. Out-Post is at a distance of 200 steps from the polling station.

The respondent produced four witnesses to rebut this evidence. Chandra Dutt Shukla (D.W.2) worked as respondent's Polling Agent at Kesarwani Vaish Pathshala Polling Station. He said that there was no disturbance there between 7 a.m. to 9-30 p.m. He used to pay Rs. 1,000 as land revenue. He worked for the respondent in the by-election. D.W. 37 is respondent's brother Kamla Prasad Mohile alias Kunnan. He denies having roughly handled Sri Kailash Narain Gupta. Kamla Pd. said that he did not visit Kesarwani Pathshala Polling Station at all. Being respondent's brother, Kamla Prasad is a highly interested witness. He said that he was supervising the by-election at Attarsuiya. He deposed that he went to Modern School Polling Station to cast his vote. Otherwise, he remained at Attarsuiya Polling Station throughout the day. Sri Ram Jas Dwivedi (D.W.46) is an Advocate. He worked as respondent's Polling Agent at Kesarwani Vaish Pathshala Polling Station. He denied that Kamla Prasad brought men of bad character, or attacked Sri Kailash Narain Gupta there. The witness said that he had no special sympathy for either party. The witness did no other work for the respondent or for P.S.P. except working as Polling Agent. Vishwanath Prasad Gupta (D.W.49) stated that he was in charge of P.S.P. Camp office outside the Kesarwani Polling Station. He stated that polling went on peacefully. There was good police arrangement. Formerly, he was a member of the City Congress Committee. Now he is a member of the Praja Socialist

Party. He canvassed for the respondent in the by-election. The witness owns a firm known as Baij Nath Prasad Vishwanath Prasad. But it does not pay any Income-tax. In 1950 the witness was in the Congress group, which was against the petitioner.

Sri Kailash Narain Gupta stated that, he protested to one Tyagi, Traffic Inspector about the misbehaviour of Kunnan. Tyagi Inspector was not produced by the Petitioner. Nor was the Presiding Officer produced. In fact no responsible officer was produced. There was no written report to the Presiding Officer. There is no reliable evidence to prove the alleged incident at Kesarwani Vaish Pathshala Polling Station.

Paragraph 4 of Schedule 'C' relates to an alleged incident at Bharti Bhawan Polling Station. It is alleged that, the respondent's supporters began to abuse female voters, who were petitioner's supporters. Respondent's workers entered the Congress camp, snatched away papers, and assaulted Congress workers. Petitioner's agent Sri Sri gh Advocate was abused. The result was that voters were to their votes. After the property of them went away without casting their votes. After the property of the property of the property of them went away without casting their votes. After the property of the property o

The per (P.W.4)
Polling to the Congress camp at Bharti Bhawan tore off Congress slips, and asked voters to the following to twisted Satya Vrat's hand, and dragged him. As a result of this diagram, voters went away without voting. Satya Vrat said that he gave a written report about this incident. According to Satya Vrat, Ex. 27 is a copy of that report. The petitioner did not take steps to summon the original report, of which Ex. 27 purports to be a copy. Satya Vrat said that he has been working as editor of different journals for 34 years. He was petitioner's supporter in the by-election. He worked for the petitioner even before the polling day. Satya Vrat does not know names of men, who made indecent remarks about women. No woman in particular was thus addressed. Syed Shah Asghar Husain (P.W.22) said that he was sending voters from Mohalla Bahadurganj to Polling Station Bharti Bhawan. He heard that there was some trouble at the Polling Station. So people got frightened, and refused to go to the Polling Station. He estimates that 400 or 500 did not go for polling for this reason. Most of them were women. The witness has no personal knowledge about the incident at the Polling Station. Nitya Nand Tiwari (P.W. 32) was petitioner's polling agent at Bharti Bhawan Polling Station. The witness has been in the Congress for many years. He was a member of City Congress Committee. He worked for the petitioner in the by-election. It will be noticed that attempt has been made to prove the story by producing interested and biased witnesses only.

The respondent produced six witnesses to meet this charge. Ram Sewak (D.W.6) stated that he went to Bharti Bhawan Polling Station to cast his vote. He did not see anybody abusing or threatening Congress workers. He and his brother jointly pay Rs. 150 as Income-tax. He does money lending business. Sri Vishwanath Pande (D.W.18) was working as respondent's polling agent at Bharti Bhawan Polling Station. He said that voting was peaceful, and there was no rowdyist within the Polling Station. Sri Vishwanath Pande is a Pleader. He cannot say where the Congress camp was located. His house is just in front of the Polling Station. He said that the by-election was held in winter. This statement is, of course, wrong. The by-election was held in the month of May. Tej Pratap Singh (D.W.21) was another Polling Agent for the respondent at Bharti Bhawan Polling Station. He also said that voting was peaceful. He used to pay Rs. 4,000 as land revenue. He owns a number of houses. He supported the respondent in the by-election. Shiv Prakash Bhalla (D.W.25) lives at Bharti Bhawan. He said that he was watching the polling from his house. Complete peace prevailed at the Polling Station. He went to Modern School Polling Station for about an hour for casting his vote. Otherwise he remained at home throughout the day. He used to pay Rs. 2,500 as land revenue. He owns a number of houses. Kamla Prasad Mohile (D.W.37) denied having created any disturbance at Bharti Bhawan Polling Station. He denied having visited Bharti Bhawan Polling Station. According to the petitioner's evidence, the disturbance at Bharti Bhawan Polling Station took place at 2-30 p.M. Sri Ram Tohro'ra (D.W.39) said that he noticed Kamla Prasad at Attarsuiya Polling Station for alibi carries no weight.

According to the petition Sri Sripat Narain Singh, Advocate was abused by the respondent's workers. The petitioner did not produce Sri Sripat Narain Singh in the witness-box to prove the incident. Sri Sripat Narain Singh appeared before us as one of the counsel for the petitioner. Neither the Presiding Officer nor any police officer, who helped to restore order News produced on behalf of the petitioner. No written report was made to the Presiding Officer. The original report alleged to have been made to the Police has not been produced. There is no satisfactory evidence to prove the alleged disturbance at Bharti Bhawan Polling Station.

Paragiaph 5 of schedule 'C' ielates to an incident, which took place at Yadgar Huseini Polling Station. It is said that the petitioner went to inspect arrangements at Yadgar Huseini Polling Station. The returned candidate and his supporters entered the Polling Station and began shouting anti-Congress slogans. They abused and roughly handled the petitioner. In order to save the petitioner, the Presiding Officer took him inside his office. Polling had to be suspended. The Presiding Officer sent a message to Kct additional police force. The Additional District Magistrate, the Senior Magistrate reached the Polling Station and rescued the petitioner. This incident created such a supporters came to cast their supporters to the said of the petitioner.

The petitioner produced six witnesse to prove this incident Ajit Narain Chaddha (PW17) was petitioner's polling agent at Yadgar Huseini Polling Station. He said that he worked at the camp office near the polling station. The witness heard that voters were not coming in sufficient numbers, because a crowd had surrounded the petitioner inside the polling station. The witness does not claim to have seen the occurrence inside the Polling Station. The witness is indebted to the extent of Rs 1000 Municipal taxes have been in arrear against him. The Chairman granted time for payment Matiullah (PW30) said that he went to Yadgar Huseini Polling Station to cast his vote. He could not vote at 10 AM, as there was a big crowd there. PSP men were shouting and raising slogans. At first the witness said that he cannot name those PSP, men. Then he gave certain names. Matiullah has been a Congress member for many years. Gava Prasad. (PW41) stated that he accompanied the petitioner. men Then he gave certain names Matiullah has been a Congress member for many years Gaya Prasad (PW41) stated that he accompanied the petitioner to Yadgai Huseini Polling Station The respondent and others entered the to Yadgai Huseini Polling Station The respondent and others entered the polling station. There were cries that Pande Ji was against Islam, so he should be cut to pieces. The witness went to Kotwali to bring additional police force. Then officers arrived the crowd insisted on Pande Ji being turned out. Gaya Prasad is a member of the District Bos. He used to work as a contractor. In one year, he paid Rs. 8 900 as Income and His house is in Muthigani outside this constituency. He is a Congress merican But he says that he did not do any canvassing in the by-election. He met the petitioner by chance near Prabhat Talkies. The petitioner gave him a lift in a Jeep car although the witness was not on intimate terms with the petitioner. Although the witness went to the Kotwali, no report was taken down there. P.W.55 is the petitioner himself. He described the incident at Yadgar Huseimi Polling Station. The petitioner was Chairman of the Municipal Boaid Allahabad from 1948 to July 1953. He was elected to the U.P. Legislative Assembly in the last General Election. was Chairman of the Municipal Board Allahabad from 1948 to July 1953. He was elected to the UP Legislative Assembly in the last General Election. The petitioner's election was set aside by the Election Tribunal. That made it necessary to hold the by-election in May 1953. The petitioner says that he was confined in a small room at Yadgar Huseini Polling Station for about 45 minutes. The Additional District Magistrate ordered the crowd to clear out. The respondent said that the crowd would not leave the place until the petitioner left. PW 56 is Sri Mangala Prasad. Deputy Minister. He visited Yadgar Huseini Polling Station for two minutes. He saw the crowd coming out of the Polling Station. The crowd was followed by the petitioner and Police Officers. PW 57 is Sri K. P. Slivastava. Deputy Superintendent of Police. He stated that he received a wireless message that there was a crowd at Yadgar Huseini Polling Station. So he rushed there. He noticed a crowd of 100 or 150 persons within the gate of the Polling Station. A section of the crowd was shouting that, the candidates should go. Both the petitioner and the respondent were there. The police officer asked the crowd to clear out. He asked both the candidates to go out. So the crowd and the two candidates went out. On 3rd May 1953 the So the clowd and the two candidates went out. On 3rd May 1953 the out So the clowd and the two candidates went out. On 3rd May 1953 the petitioner sent a report to the Deputy Superintendent of Police (City) after the polling was over. The original report was summoned but did not reach the Tribunal. The petitioner's ated that Ex 30 s a copy of that report. Since the original report cannot be found secondary evidence may be accepted. This report (Ex 30) makes no mention about the incident at Yadgar Huseini Polling Station. The petitioner's explanation is that no did not mention the incident in Ex 30 because his life was not then in danger, and the incident was not serious further he was too tired at 10 pm to put. Own that incident into writing The respondent PRODUCED FOUR WITNESSES ON this point. Sri Narottam Das Tandon (D.W.27) worked as respondent's Polling Agent at Yadgar Huseini Polling Station. He said that voters objected to the petitioner's presence at the female polling booth. Sri Tandon is a member of the Legislative council. In the written statement the respondent merely denied the incident at Yadgar Huseini Polling Station. There was no plea in the written statement that, certain persons objected to the petitioner's presence at the female booth. This case was taken up only in evidence. The place of voting at the female booth was not visible from where Sri Tandon was working. But the building was visible. Sri Tandon does not know who the Presiding Officer was. In November 1953 Sri Tandon asked in the Council certain question about Sri B. N. Pande. Hakim Murari Lal (D.W.35) stated that he worked at P.S.P. camp office at Yadgar Huseini near the Polling Station. He said that it was wrong that anybody went to Congress camp or tore away the papers. The witness has been practising as a Hakim. He does not pay any Income-tax. He appeared before us with crutches. He admitted that he is unable to go about without crutches. A cripple like him can be of the sassistance in an election. He says that he supported the respondent selection. Sri Mohammad Haider (D.W.36) stated that he worked as received in a selection of the petitioner entered the female booth, the female polling agent at Yadgar Huseini Polling Station. There was good police agement. When the petitioner entered the female booth, the female polling pleader. He does not know when P.S.P. camp was located. He is a P.S.P. member. D.W. 42 is Sri Kalyan C. d. Mohiley respondent. He denied having abused the petitioner at Yadgar Huseini Polling Station. The respondent said that it was wrong that the petitioner was shut up in a room for 45 minutes.

The Presiding Officer of Yadgar Huseini Polling Station was not produced before the Tribunal. However, the petitioner's statement on oath is supported by the evidence of the Deputy Superintendent of Police (P.W.57). There is therefore no doubt that, there was some disturbance at Yadgar Huseini Polling Station. But the petitioner seems to have exaggerated the incident. It seems that, for some reason, certain persons raised objection to the presence of the candidate inside the polling station. That kind of public objection will not vitiate the election.

Paragraph 6 of schedule 'C' relates to the incident, which took place just outside Saraswat Khatri Pathshala Polling Station. According to the petition, the petitioner visited this polling station at about 4 p.m. Respondent's supporters led by one Deshraj rushed towards the petitioner, who was going in a Jeep car. They threw stones and brick-bats at the Jeep. The petitioner and other occupants of the Jeep received injuries. One Daud Husain threw himself in front of the moving Jeep. The driver managed to save that man from being run over by the Jeep. Then another man threw a cycle in front of the Jeep. This cycle was smashed. The incident created so much panic that 350 voters who were petitioner's supporters did not care to cast their votes.

were petitioner's supporters did not care to cast their votes.

The petitioner produced five witnesses to prove the incident. Kartar Singh (P.W.10) was petitioner's agent at Saraswat Khatri Pathshala Polling Station. He described how the petitioner's jeep was attacked at about 4 p.m. Pearey Lal Gupta (P.W.18) said that he was Polling-in-Charge of Saraswat Khatri Pathshala on behalf of the Congress. He also saw the jeep incident. Sibtul Husain (P.W.27) stated that he went to Kayastha Pathshala to cast his vote. By Kayastha Pathshala the witness probably meant Saraswat Khatri Pathshala. Sibtul Husain said that he had no sympathy for the Congress, and that he did no election work for the petitioner. There were two police Sub-Inspectors and a dozen constables besides an armed guard at the gate. None of these policemen seems to have intervened to save the petitioner. Srimati Sushila Chaddha (P.W.15) stated that she was Polling Agent for the petitioner at Khatri Pathshala Polling Station (Lady Booth). Several P.S.P. workers entered the female booth, and shouted that voters should vote for the hut mark. She heard some noise at 4 p.m. 20 or 25 men rushed into the female booth. A young man caught hold of her hand and dragged her. She almost fell down. She was saved by policemen. She does not know the names of the P.S.P. men, who rushed into the female booth. She did not see the attack on the petitioner's jeep. It is true that the witness was working as petitioner's polling agent. Nevertheless, her statement appears to be substantially true. She was principal of Refugee Training Centre at Naini. She used to get Rs. 110 pm. as pay. P.W. 55 is the petitioner himself. He after describing the incident said that the driver of the jeep was so frightened that he left Allahabad immediately. The petitioner does not know the driver's present address. The petitioner in detail in the report (Ex. 30) dated 3rd May 1953. Desh Raj's name is mentioned in the report.

The respondent produced three witnesses on this point. Sri Agha Mohammad Sibtain Khan (P.W.15) worked as respondent's polling agent at Saraswat Khatri Pathshala Polling Station. He said that there was no disturbance there. Sri Sibtain is a pleader. The witness had sympathy for P.S.P. He was intimate with the respondent. Mostly the witness remained at his booth. So it was difficult for him to see what was happening outside the polling station. According to the petition, the crowd which attacked the jeep was led by Desh Raj. Desh Raj appeared before the Tribunal as D.W. 24. He denied having attacked the petitioner at Saraswat Khatri Pathshala Polling Station. He said that he did not work for any party in the by-election. He said that he deals in cloth, and pays Income-tax varying between Rs. 600 and Rs. 2,000 in different years. Mohammad Tahir (D.W.29) deposed that he worked at the respondent's camp near Saraswat Khatri Pathshala. He denied that female voters were abused. He also denied that the petitioner's jeep was surrounded by a crowd. The witness supported the respondent in the by-election. He is the owner of Tahir Type Foundry. He does not pay Income-tax.

The petitioner's statement is supported by the statement of Shrimati Sushila Chaddha and the report Ex. 30. Undoubtedly there was some disturbance at Saraswat Khatri Pathshala Polling Station. But we cannot be sure that P.S.P. agents were responsible for the assault on Srimati Sushila Chaddha or for the attack on the petitioner's jeep. We have examined form No. 14 for different Polling Stations. We find that at Saraswat Khatri Pathshala Polling Station the petitioner secured 501 votes, while the respondent got 803 votes.

Paragraph 7 of schedule 'C' relates to an alleged incident at Colvin School Polling Station. It is alleged that respondent's agent Mohammad Salim and Ram Chandra, who is proprietor of Kailash Hotel, and other supporters of the returned candidate entered the Polling Station, and threatened voters. The petitioner's agent, Sri Bahuguna M.L.A. was abused and roughly handled. Voters became so panicky that they dared not visit the Congress camp.

The petitioner produced four witnesses on this point. Devendra Singh (P.W.11) stated that on the polling day he was bringing voters to Colvin School Polling Station. P.S.P. workers shouted slogans, and snatched slips from the hands of Congress supporters. When Sri Bahuguna protested, one man caught and pushed him. Devendra Singh worked for the petitioner in the by-election. Colvin School adjoins the bungalow of the Deputy Superintendent of Police. Deo Shankar Misra (P.W.40) also said that he was taking voters to Polling Station at Colvin School. Voters were harassed. Abusive language was used towards the female voters. Many female voters went away on account of this nuisance. Abusing female voters appears to be pointless. Such abusing was not likely to win over such voters to the side, to which the offender belonged. Bhagwan Das (P.W.42) stated that he went to Colvin School Polling Station to cast his vote. P.S.P. men surrounded him, and tore off his card. Tearing away Congress slips from a voter's hand was not likely to be of much help to the rival party. It was open to a voter to carry a P.S.P. slip, and yet vote for the Congress. Sri Jawahar Lal (P.W.52) worked as Pande Ji's Polling Agent at Colvin School Polling Station. He stated that P.S.P. workers used to tear away Congress cards. They used to say that votes should be given for the hut mark. Sri Jawahar Lal is a member of U.P. Legislative Assembly. His education is meagre. He did not make any written complaint to the Presiding Officer. He got a loan or grant of Rs. 750 from Government for his shop. The shop has been now closed down.

The respondent produced three witnesses on this point. Prabhat Shastri (D.W.7) stated that he worked as supervisor of P.S.P. camp office outside Colvin School Polling Station. There was no trouble of any kind there. He is a Sahityacharya. He is a P.S.P. member. His duty was confined to the camp office. So he was not in a position to see what was happening inside the Polling Station. There is no record to prove that, the witness was posted as supervisor of the P.S.P. camp office. Sri Nanak Saran (D.W.8) worked as respondent's Polling Agent at Colvin School Polling Station. He said that polling Polling Agent at Colvin School Polling Station. He said that polling respondent in the by-election, he is not a P.S.P. member. He was confined to one particular booth. In the initial stage Sri Nanak Saran appeared as a counsel for the respondent before us. He withdrew as counsel, and appeared in the witness-box. According to the petition, the attack at Colvin School Polling Station was led by Ram Chandra, who is proprietor of Kailash Hotel. Ram Chandra Lal appeared before the Tribunal as D.W. 33. He denied having threatened voters or roughly handled Sri Bahuguna. Ram Chandra Lal has got four houses, and paid Rs. 750 as Income-tax last year. At one time he was a

member of the City Congress Committee. He supported the respondent in the by-election. He was respondent's Polling Agent at Colvin School Polling Station. He has filed a complaint against the petitioner in a criminal court about misappropriation of municipal funds. It appears that Sri Ram Chandra Lal has got some private grudge against the petitioner.

It was alleged for the petitioner that Sri Bahuguna, M.L.A. was roughly handled at Colvin School Polling Station. Sri Bahuguna was not produced to prove the charge. The Presiding Officer was also not produced. There was no written report about the incident. It is true that, the respondent received at Colvin School Polling Station as many as 1,055 votes as against 445 votes secured by the petitioner. But the alleged disturbance at Colvin School Polling Station has not been proved. The polling of 1,500 to 1,600 votes goes to show that polling was regular.

Paragraph 8 of schedule 'C' relates to an alleged incident at South Malaka Polling Station. It is alleged that, the respondent's supporters roughly handled petitioner's agents. After shouting slogans for half an hour, respondent's workers went to the house of Sri Mahabir Prasad Shukla, M.L.A., hurled abuses at inmates of the House, and threatened them. This created such a panic that, voters sitting in the Congress camp dispersed without casting votes.

The petitioner produced three witnesses on this point. Panna Lal (P.W.16) stated that he was working at the Congress camp near south Malaka Polling Station. At about 4 P.M. P.S.P. workers entered the Polling Station shouting slogans. Some of these men attacked Sri Mahabir Prasad Shukla's house. Panna Lal said that one Chingai Khan was sent to bring back voters. Panna Lal does not remember if Chingan Khan had a beard or not. So it appears that he never saw this man.

Chhabi Nath Sharman (P.W.19) worked as a Polling Agent at South Malaka. He said that P.S.P. men raided the Polling Station and abused Sri Mahabir Prasad Shukla. So voters got frightened and ran away. The witness has been in the Congress for many years. At present he is the Vice-President of the City Congress Committee. The witness did not give any written report about the incident to the Presiding Officer. Ganga Prasad Yadav (P.W.36) was another Congress Polling Agent at South Malaka Polling Station. He said that the respondent's workers snatched voter's cards from his hands several times. He was told that voters were running away, because workers of Chhunnan Guru were beating Congressmen.

The respondent produced four witnesses on the point. Abdul Samad (D.W.3) stated that he was looking after voters, on behalf of the respondent at South Malaka Polling Station. Voting was peaceful there. Nobody abused or threatened any Congress voter. Abdul Samad is a P.S.P. member. Sri Mahabir Prasad Shukla's house was not visible from P.S.P. camp. So Abdul Samad could not say if some men attacked Sri Shukla's house. Abdul Samad says that he did not notice Sri M. P. Shukla there that day. Dr. Varma (D.W.9) worked as respondent's Polling Agent at South Malaka Polling Station. He said that there was no rowdyism, and police arrangement was adequate. Dr. Varma is Secretary of the Allahabad Branch of Bolshevik Party. As advised by his party, he supported the respondent in the by-election. He is a homeopath doctor. He did not take homeopathy training in any college. He does not pay Income-tax. His work was confined to one particular booth. So he could not say what was happening outside the Polling Station. Moti Lal (D.W.34) stated that he worked as P.S.P. Supervisor at South Malaka Polling Station. Polling was peaceful there. Moti Lal said that he was a Congress member for eight years. At present he is General Secretary of the District P.S.P. He was not a polling Agent. He never entered the Polling Station at South Malaka. Sri M. P. Shukla's house was not visible from his camp. Chandrakeshwar Nath Pathak (D.W.45) deposed that he went to South Malaka Polling Station to cast his vote. Polling was going on there peacefully. The witness owns five houses, and pays about Rs. 500 as tax. He was never a P.S.P. worker. His stay at the Polling Station was for ten minutes only.

At South Malaka Polling Station the petitioner secured as many as 959 votes as against 582 votes received by the respondent. The Presiding Officer was not produced to describe the conditions of the Polling. No written report was given to the Presiding Officer. The alleged incident at South Malaka Polling Station has not been proved.

In this by-election some 33 per cent. votes were polled. It will be noticed that inspite of alleged disturbances, this average was maintained at each polling

station including those that were not mentioned as disturbed area. How can it be said that Sri Pande's voters ran away as soon as they saw P.S.P. men.

Besides this, the petitioner has tried to convey the idea that there was no law and order in the city. We find that the District Magistrate, senior Superintendent of Police and other responsible officers were moving about the whole day. Not one of these men was produced. Under the circumstances we cannot accept the petitioner's version on this point.

Paragraph 9 of schedule 'C' relates to two connected incidents, which took place on 24th April 1953. According to the petition, petitioner's workers were addressing corner meetings from a jeep car at 10 p.m. At first this party was attacked near the Church in Chowk. P.S.P. men began to abuse the petitioner's workers. P.S.P. men threw stones and brick-bats at petitioner's supporters. The Congress flag on the jeep was torn to pieces. The police was informed, and the hooligans took to their heels. When the jeep reached Mohalla Lohatti, P.S.P. workers again attacked the petitioner's men. The police was again informed, and two or three hooligans were arrested.

The petitioner produced five witnesses to prove this incident. Satya Narain Prasad (P.W.3) stated that he was one of the men, who were successively attacked near the Church and at Lohatti. He helped the petitioner in the by-election. The police did not arrest anybody. The injured men were taken to the Kotwali. But no report was taken down. It was said that such incidents had become quite common. It was unlikely that the police would refuse to take down a report, when the injured men were brought to the Kotwali. Devendra Singh (P.W.11) said that he too was in the party, which was successively attacked near the Church and at Lohatti. Devendra Singh worked for Pande Ji in the by-election. Devendra Singh went to the Kotwali to lodge a report, but did not request that his report should be taken down in writing. Ram Chand Vaish (P.W.12) deposed that he was among the men, who went about in a jeep near the Church and in Lohatti. He did not identify any local witness in Lohatti. Sri Kailash Narain Gupta (P.W.14) used to receive reports about the progress of election work. He said that Devendra Singh had an injury. Devendra Singh, Ram Chandra Vaish and Sat Narain reported to him about the incident, which had taken place at 10 p.m. Sri Suraj Bhan Singh (P.W.54) is the Station Officer of Kotwali. He stated that on 24th April 1953 a written report was received on behalf of Ram Chandra Vaish. The Sub-Inspector noticed that Ram Chandra Vaish was surrounded by a crowd near the Kotwali. Later the Sub-Inspector again saw him surrounded at Lohatti. The Sub-Inspector did not recognise any one in the crowd, which had surrounded Ram Chandra. The crowd consisted of boys, adults and passerby. The Sub-Inspector known respondent's brother Kunnan and the P.S.P. worker, Dayalu. The Sub-Inspector's statement suggests that Kunnan and Dayalu were not in the crowd, which had surrounded Ram Chandra Vaish.

The respondent produced five witnesses on this point. According to the petitioner's evidence, Satya Narain Pande was among the men, who attacked Congress workers on Grand Trunk Road. Satya Narain Pande (D.W.12) denied that he or Kunnan disturbed Congress election meetings or abused people or threw brick-bats Mohammad Hanif (D.W.19) stated that he used to keep a shop on Grand Trunk Road. He said that no such incident took place in Lohatti during the election period. Lohatti is at a distance of 50 or 60 steps from his shop. He said that he used to remain at his shop till 10 or 10-30 p.m., Musharaf Ali (D.W.30) stated that he has got a perfumery shop at a distance of 25 or 30 steps from the Church in the Chowk. Lohatti is at a distance of 30 steps from the shop. He remains at his shop till 10 p.m. There was no such incident near the Church or at Lohatti. Banke Lal (D.W.32) stated that he keeps a betel shop in front of the Church. There was no disturbance during the election period as suggested by petitioner's witnesses. According to petitioner's evidence, Kamla Prasad alias Kunnan was amongst the men, who disturbed the Congress meetings near the Church and at Lohatti. Kamla Prasad (D.W.37) denied having surrounded the Congress jeep, or having thrown brick-bats at it near the Church or in Lohatti.

No report about this incident has been produced. But the statements of the petitioner's workers have been corroborated by the statement of the Sub-Inspector (P.W.54). The Sub-Inspector's statement shows that certain men surrounded Ram Chandra Vaish's party successively near the Church and at Lohatti, But identity of the mischief-makers has not been established. It has not been shown that, these Congress meetings were disturbed at respondent's instance.

According to paragraphs 10 and 11 of schedule 'C' the petitioner's workers were abused, insulted and beaten, while they were carrying on election work in Mohallas Chowk Gangadas and Loknath.

The petitioner produced four witnesses on this point. Rameshwar Nath Chopra (P.W.5) stated that P.S.P. men used to interfere whenever he went out to distribute cards. The witness worked for the petitioner in the by-election, and was his Polling Agent at Attarsuiya Polling Station. The witness has been a Congress member for many years. It appears that he is a member of the City Congress Committee. His brother Bhola Nath Chopra is P.W.26. He stated that he was disturbed, while he was distributing Congress cards in Mohalla Chowk Gangadas. P.S.P. men snatched Congress cards from his hands. Panna seized him, and threw him on the ground. Bhola Nath received many injuries. He says that he did not give a written report to the Congress, but gave a written application at the Kotwali. No such written application has been proved. Bhola Nath also was working for the petitioner in the by-election. The Station Officer of Kotwali (P.W.45) said that a written report was received on behalf of Devendra Singh on 26th April 1953. No such report has been proved. The Sub-Inspector has no personal knowledge about the alleged incident of 26th April 1953. P.W. 56 is Sri Mangla Prasad, Deputy Minister. He stated that he went in Chowk Gangadas for canvassing. There was disturbance during his canvassing. Some boys followed him shouting slogans. When he reached Chowk Gangadas, he was surrounded by crowds on both sides. So he did not enter the by-lanes.

The respondent produced two witnesses on this point. According to P.W. 5, one Pukki took part in the disturbances. Ram Kishore Khanna (D.W.4) stated that he is also known as Pukki Babu. He did not threaten Rameshwar Das Chopra. Ram Kishore Khanna is a partner of Messrs. Sanwal Das Khanna. This firm pays about Rs. 1,000 as Income-tax. Formerly, the witness was a Congress member. He says that he did not work for any candidate in the by-election. Kamla Prasad Mohile (D.W.37) denied that he threatened Suraj Narain Chhadha and others in Mohalla Loknath or Chowk Gangadas.

The petitioner did not produce any resident of Mohalla Loknath or Chowk Gangadas to prove the alleged interference. No report to the police or at the Congress office has been proved. There is no satisfactory evidence to prove that, P.S.P. workers interfered with the election work by Congressmen in Mohalla Loknath or Chowk Gangadas.

The incident described in paragraph 12 of schedule 'C' was not pressed on behalf of the petitioner.

Paragraph 13 of schedule 'C' relates to an incident alleged to have taken place on Leader Road. It is alleged that two Congress workers, Nitya Nand Tewari and Amrit Lal Gupta were canvassing for the petitioner. Ram Chandra Hotelwala and other supporters of the respondent attacked the Congress workers. This created a panic in the locality, and the voters were terrified.

The petitioner produced two witnesses on this point. P.W. 32 is Nitya Nand Tewari. He described how he was attacked by P.S.P. men, as he was going about in a horse cart. He says that he sent one man to make a report to the police. No such report has been proved. The witness himself did not make any report in the Congress office. Gilbert (P.W.49) deposed that he was with Nitya Nand Tewari, when the party was attacked on Leader Road. Gilbert lives in Old Katra, while Nitya Nand Tewari lives in Katra.

The respondent produced two witnesses to meet this charge. Ram Chandra Lal (D.W.33) is the proprietor of Kailash Hotel. He denied having attacked Nitya Nand Tewari and Amrit Lal Gupta on Leader Road. According to the petition, Nitya Nand Tewari was accompanied by another Congress worker, Amrit Lal Gupta. D.W. 40 is Amrit Lal. He denied that he, Nitya Nand and Gilbert were attacked on Leader Road as alleged by the petitioner. He said that he is a Congress member, and worked for Pande Ji in the by-election. It was suggested on behalf of the petitioner that, Amrit Lal (D.W.40) is different from Amrit Lal Gupta mentioned in the petition.

The incident is alleged to have taken place on Leader Road. There are several shops on Leader Road. No resident of Leader Road was produced by the petitioner to prove the alleged attack on Nitya Nand Tewari. No report made to the police has been proved. The petitioner has failed to prove the alleged incident on Leader Road.

The incident in paragraph 14 of schedule 'C' was not pressed on behalf of the petitioner.

At the end of schedule 'C' it is mentioned that, the petitioner had brought to the notice of the District Magistrate that, the respondent had been unlawfully interfering with the petitioner's election work. In this connection the petitioner stated in his deposition that, the District Magistrate convened a meeting of candidates and heads of different organizations on the 22nd of April 1953. The District Magistrate advised the parties to carry out the election campaign peacefully. A gentleman's agreement was arrived at. But the gentlemen's agreement was not acted upon. The Deputy Superintendent of Police Sri Srivastava (P.W.57) also referred to the meeting held at the District Magistrate's bungalow on 22nd April 1953. It was decided under the gentlemen's agreement that, no party should hold a meeting within 200 yards of the meeting of another party, that abusive language should not be employed in slogans, and that posters were not to be defaced. On the 24th of April the Congress and P.S.P. reported about the use of abusive language in slogans and disturbances in meetings. So Sri Srivastava called another meeting at the Kotwali on the 26th of April. Parties were requested to carry out the gentlemen's agreement, and not to employ bad characters in the election. The petitioner stated that he wrote a letter to the District Magistrate suggesting that, suitable steps be taken to ensure peace during the polling. The letter was summoned but was not traced. According to the petitioner, Ex. 29 is a true copy of his letter dated 27th April 1953 addressed to the District Magistrate.

We now proceed to examine whether the facts proved under schedule 'C' establishes the charge of undue influence against the respondent. Undue influence has been defined in sub-section (2) of Section 123 R.P. Act, 1951. 'Undue influence' means any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right. 'Electoral right' has been defined in clause (d) of Section 79 of the Act. 'Electoral right' means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election. The definition shows that electoral rights are of two kinds. The first category deals with the right of a person to decide for himself whether he should stand or not as a candidate for the election. The second category deals with the right of an elector whether he should vote for this candidate or that candidate or not vote at all. The major corrupt practice of undue influence involves invasion of some person's electoral right by a candidate or his agent or by some person with the connivance of the candidate or his agent.

The petitioner succeeded in proving certain disturbances at Polling Stations Tonga Stand, Yadgar Huseini, Saraswat Khatri Pathshala on the polling day, and on Grand Trunk Road, a few days before the polling day. We have found that Sri Sheo Kumar Pande was pushed and thrown at a brick fencing at Tonga Stand Polling Station. This act caused annoyance and injury to Sri Sheo Kumar Pande. He was there as petitioner's polling agent. There is no suggestion that, the petitioner was being induced, to withdraw from the contest. Polling was in full swing. There was no question of the petitioner withdrawing from the contest. Again, no elector at Tonga Stand Polling Station was asked to vote for the respondent or not to vote for the petitioner. There was no infringement of the electoral right either of the petitioner or of any voter. The attack on Sri Sheo Kumar Pande did not amount to undue influence under Section 123(2) of the Act. At Yadgar Huseini Polling Station certain persons insisted on the petitioner going out of the Polling Station. The definition of electoral right refers to the right of a person to stand. The expression 'to stand' does not refer to physical standing. The definition itself makes it clear that, the right refers to the right of a person to stand as a candidate. Although certain persons made the petitioner leave the Polling Station, there was no effort to make him withdraw from being a candidate. So although there was some interference with the petitioner's right to remain within the polling station, the interference did not amount to undue influence. The same remark applies to the occurrence at Saraswat Khatri Pathshala Polling Station. Certain persons threw brick-bats at petitioner's jeep, and made him leave the place. But there was no interference with the petitioner's right to stand as a candidate. The petitioner remained a candidate for the by-election whether his jeep was near Saraswat Khatri Pathshala or somewhere else. This incident also does not make out a charge of undue influence. Some pe

at an election. We hold that although certain incidence detailed in schedule 'C' have been proved, it has not been proved that, respondent No. 1 or his agents or his workers used threats or exercised undue influence.

Issue No. 8.—The charge under consideration is whether the respondent published defamatory statements about the petitioner. This issue has to be considered with reference to schedule 'D' attached to the petition. According to schedule 'D', the respondent made false statements about the petitioner in several public meetings. Schedule 'D' contains a long list of public meetings. During arguments only five meetings mentioned in schedule 'D' were pressed on behalf of the petitioner. One meeting is said to have been held in Mohalla Gariwantola on 19th April 1953. The remaining four meetings are said to have been addressed by one Salamat Ali on the night of 2nd May 1953.

Devendra Singh (P.W.11) gave evidence about the election meeting held in Gariwantola. He stated that Sri Nanak Saran Vakil was giving a lecture, while the respondent was sitting in the meeting on a platform. In that meeting Sri Nanak Saran said that Pande Ji is dishonest. He gets cows struck with electric whips. The speaker asked people whether they wished to vote for such an irreligious man.

The respondent produced Sri Nanak Saran, Advocate as D.W. 8 to refute the charge. He admitted that he was the Chairman of one election meeting held in Gariwan Tola. But he denied having made any defamatory statement about the petitioner. Sri Nanak Saran said that he is not a P.S.P. member, although he worked for the respondent in the by-election.

Devendra Singh (P.W.11) was petitioner's worker in the by-election. The statement of this solitary witness is not sufficient to prove that, Sri Nanak Saran made defamatory statements about the petitioner in the election meeting in Gariwantola.

One newspaper 'Siasat' is published from Kanpur. Salamat Ali Mehdi was the editor of this newspaper. Ex. 19 is the issue of 'Siasat' dated 2nd May 1953. The following matter was published in this issue of 'Siasat':—"In a Hindi book Jai Hind Reader prescribed for U.P. Schools, it is written that 'Satan' lives in mosques. The writer of that book has been selected by the Congress as a candidate for the U.P. Assembly from Allahabad. It is an intolerable insult to the religion of Muslims. Why has U.P. Government not already proscribed that book, and not prosecuted its writer? At the time of casting votes, Muslims of Allahabad should distinguish between friend and enemy". Ex. 18 is the issue of 'Siasat' dated 9th May 1953. The newspaper expressed satisfaction that, the writer of Jai Hind Reader had lost in the by-election. It appears that Ex. 18 was published just after the result of the by-election was announced. These two issues of 'Siasat' published before and after the by-election make it clear that, the newspaper was against Sri B. N. Pande.

In order to understand this attitude of the newspaper 'Siasat', one has to read a poem 'Fatehpur Sikri' composed by Sri B. N. Pande many years ago. The poem was published in July 1937 in a Hindi Magazine 'Vishal Bharat'. Ex. 25 is the volume containing a few issues of 'Vishal Bharat' for the year 1937. The same poem 'Fatehpur Sikri' was selected for Jai Hindi Reader (Ex. 31) written by Sri Bishambhar Nath Pande. It appears that the book has been prescribed for students of Class VIII. The poem appears at page 45 of Jai Hindi Reader. One stanza of this poem contains reference to mosque and satan. This stanza may be rendered in English thus:—

They say God dwells in temple alone and the mosque is occupied by Satan, The conch blown in the temple is full of life and the call to prayer from mosque is lifeless.

They say Rama is different from Rahman,

And Rahman is different from Rama

Such people have failed to untie the knot of deception,

Failed to realise the human values".

It will be seen that, although the sentence "the mosque is occupied by Satan" appears in this stanza, the poet had no intention of preaching such a doctrine. On the contrary, the poet wished to exphasize that Rama and Rahman are the same. To proclaim that the poet was suggesting that the mosque is occupied by Satan was a false interpretation of the poem.

The petitioner's case is that Salamat Ali Mehdi, in order to prejudice Muslim voters of Allahabad against the petitioner, came to Allahabad on the evening of 2nd May 1953, and addressed several meetings preaching that Sri Pande was an enemy of Islam. It is alleged that Salamat Ali addressed meetings at four different places—Minhajpur Park, Sarai Garha, Kolhan Tola and Hasan Manzil between 8 P.M. and 12-45 A.M. during the night of 2/3rd of May 1953. Evidence about the four alleged meetings may now be considered.

The petitioner produced two witnesses with respect to the meeting at Minhajpur. Mohammad Siddiq (P.W.34) deposed that he attended the meeting at Minhajpur. In that meeting Salamat Ali said that, nobody should vote for a man who had said that Satan lives in mosques. Mohammad Siddique is a resident of Phulpur. He said that he came from Phulpur to Allahabad one week before the polling day in order to help the Congress candidate in the by-election. He stated that he is a member of All India Momin Conference, and that their President advised the witness to help the Congress candidate. According to Kallu Khan (P.W.45), Salamat Ali said in the meeting that, Pande Ji was enemy of God, and that anybody voting for him would incur the wrath of God. Kallu Khan is a bookbinder living in Bahadurganj. He has been a Congress member for many years. He helped the petitioner in the general election. Kallu Khan mentioned Machchli Bazar as the place of the meeting, and 9-30 p.m. as the hour of the meeting. According to the petition, the meeting was held at 8 p.m. at Minhajpur Park.

According to the petitioner's evidence, the respondent went to Allahabad station to receive Salamat Ali Mehdi, when he arrived by train from Kanpur on 2nd May 1953. Sri Kalyan Chand Mohiley (D.W.42) denied that he went to the railway station to receive Salamat Ali Mehdi. The respondent also denied that he organised any meeting addressed by Salamat Ali, or that the respondent participated in any meeting addressed by Salamat Ali. Out of the witnesses examined by the petitioner, one witness does not belong to Allahabad city, while the other witness is interested in the petitioner. There is no satisfactory evidence with respect to the alleged meeting held at Minhajpur. Nor has it been clearly proved if anything was actually said against Pande Ji.

The petitioner produced two witnesses with respect to the meeting at Sarai Garha. According to Ibadullah (P.W.35), Salamat Ali was saying that, the Congress candidate had written in a book that Satan lives in mosques. So nobody should vote for him. He is a blind man. We observed that Ibadullah was giving his statement suggesting that, he had committed it by heart. Khadim Husain (P.W.47) is a resident of Sabzi Mandi. According to this witness, Salamat Ali said that voting for Pande Ji would incur divine displeasure. Khadim Husain does not know if Salamat Ali is a Mulla or Maulvi. He had no beard. Khadim Husain does not know if Salamat Ali had authority to issue a 'Fatwa'. If an ordinary Muslim gives out that voting for a certain candidate would bring divine displeasure, such a threat will have little effect.

The respondent produced three witnesses on this point. Mohin Ahmad (D.W. 13) stated that no meeting addressed by Salamat Ali was held in Sarai Garha on the evening of 2nd May 1953. The witness lives at Yakutganj, which is at a distance of 100 or 150 yards from Sarai Garha. He is a clerk of a certain pleader. Mobin Ahmad supported the P.S.P. in the election. According to Ibadullah (P.W. 35), Abdul Rashid was Chairman of the meeting. The respondent produced Abdul Rashid as D.W. 48. He denied having presided over any such meeting. He is a P.S.P. member. According to the petitioner, Abdul Rashid referred to in the petitioner's evidence is not Abdul Rashid (D.W.48). Inayat Ullah (D.W.41) also said that there was no meeting addressed by Salamat Ali that evening in Sarai Garha. Inayat Ullah admitted that Salamat Ali Mehdi arrived at Allahabad by train at about 7 P.M. But the witness said that the respondent or his supporters, Sri Salig Ram Jaiswal or Kamla Prasad were not present to receive Salamat Ali Mehdi. The witness heard that Salamat Ali addressed meetings at Roshan Bagh and Hasan Manzil. Inayat Ullah keeps a shop at Allahabad junction station, and sells steel trunks. He has also got a fruit shop in the Municipal market.

Out of the two witnesses produced by the petitioner, Ibadullah's demeanour in the witness-box did not impress—us. Khadim Husain is a resident of another locality. There is no satisfactory evidence with respect to the alleged meeting at Sarai Garha.

The petitioner produced three witnesses with respect to the alleged meeting at Kolhan Tola. Mohammad Islam (P.W.25) stated that Salamat Ali warned the people that, those who would vote for Pande Ji would not get a place in heaven

but would go to hell. The witness said that he did not talk to any body about the meeting till the day of his deposition. Munir Uddin (P.W.33) stated that some 50 copies of 'Siyasat' were distributed at Allahabad, and the article in 'Siyasat' created a sensation among Muslims. According to this witness, the respondent thanked the editor for his speech. Munir Uddin has got a Biri Factory. He said that the Chairman of the meeting made no speech. According to Abdul Hamid (P.W.39), Salamat Ali told people that, Pande Ji had composed a poem to the effect that, God lives in temples while Satan lives in mosques. Abdul Hamid is a Congress member, and canvassed for the petitioner in the by-election. Abdul Hamid says that he verified the charge made by Salamat Ali against the petitioner. Abdul Hamid found that the charge was false. He gathered that Pande Ji had not written such a poem. He found out the truth before the polling.

Two witnesses were produced for the respondent. Mohammad Yasin (D.W.44) stated that he attended one meeting held at Mansur Park near Roshan Bagh. Salamat Ali Mehdi addressed the meeting in connection with the Muslim Convention. Salamat Ali said nothing about the by-election. The respondent was not present in the meeting. Mohammad Yasin cannot say who was the Chairman of the meeting. The witness claims to be an Imam. He earns about Rs. 1,000 p.m. in his business. He has not attended any other meeting in connection with the Muslim Convention. In the cross-examination of Abdul Rashid (D.W.48) we find one sentence: "I and Salamat Saheb addressed the election meeting". According to the petitioner, this was an admission by Abdul Rashid about his participation in a meeting addressed by Salamat Ali. It was urged for the respondent that, the words "Salamat Saheb" were wrongly taken down by the Tribunal in place of another name.

According to the petition, the place of the meeting was Kolhan Tola. P.Ws. 25 and 39 stated that the meeting was held at Mansoor Park. P.W. 33 said that the meeting was held in his mohalla Bukshibazar. It was contended for the petitioner that, Mansur Park, Bukshibazar and Kolhan Tola denote the same locality. On the other hand, it was urged for the respondent that, these are three different mohallas. There is some confusion in the petitioner's evidence, and the evidence with respect to the meeting at Kolhan Tola is not satisfactory.

The petitioner produced two witnesses with respect to the meeting at Hasan Manzil. Mohammad Naim (P.W.31) stated that Chhunnan Guru was present in the meeting, and that Salamat Ali asked Muslims for a promise that they would not vote for a man who was against Muslims. Mohammad Naim is a leather merchant of Mohalla Atala. Mohammad Yahia (P.W.43) is another resident of Mohalla Atala. He said that Muslims raised their hand indicating that, they were not going to vote for the petitioner. The witness said that meetings after midnight were prohibited. In order to explain his presence in the meeting, Mohammad Yahia said that he went to Clock Tower for personal work. He refused to disclose the nature of that work.

Two witnesses were examined for the respondent. Bashir Ahmad (D.W.28) said that no meeting addressed by Salamat Ali was held at Hasan Manzil. He said that he was a member of the City Congress Committee for ten years. He lives in Mohalla Atala. It was suggested in cross-examination that, he was expelled from the Congress. Sri Kalyan Chand Mohile (D.W 42) denied having joined any meeting addressed by Salamat Ali.

Sri Suraj Bhan Singh Sub-Inspector (P.W.54) stated that on and May 1953 he received a message at about 10-30 PM. that, the editor of 'Siyasat' was going to address a meeting of 'Shias' in Rani Mandi. So the Sub-Inspector went there. But he did not find any crowd there. According to the petition, the meeting at Hasan Manzil was held between 12 P.M. and 12.45 A.M. The day of polling commenced after the midnight of 2.5.53. Under Section 126, R.P.Act, 1951, public meetings on the election day were prohibited. At 10-30 P.M. the police had received information about Salamat Ali's activities. It was therefore difficult to hold an election meeting after midnight. The alleged meeting at Hasan Manzil has not been proved.

The article in 'Siyasat' appears to be based upon information received from Allahabad. The editor is only responsible for publishing it. To say that the editor wrote the article at the instance of P.S.P. men and followed it up by coming to Allahabad and addressing four pre-arranged meetings is rather a far-fetched idea. It is true that the editor came to Allahabad on the 2nd of May. We may assume that he addressed one or two meetings at Allahabad. But we cannot hold that the article, the editor's arrival and the meetings at Allahabad were the outcome of a pre-arranged plan

In the case 'Shiv Das versus Abdul Samad' (the Gazette of India Extraordinary, Part II, Section 3 No. 261, dated 10th October 1953 page 3123) decided by us, the newspaper 'Chunao' contained some matter in support of the respondent. The question for consideration was whether the publisher of the journal was respondent's agent. We explained at page 3132 that, a candidate is responsible generally for the actions of those, who, to his knowledge, for the purposes of promoting an election, canvass and do such other things as may tend to promote his election, provided that the candidate or his authorised agent has reasonable knowledge that these persons are so acting with that object. After examining the contents of the journal and other evidence produced by the parties, we were not satisfied that the paper 'Chunao' was published under patronage or cost of the respondent.

We have seen that one article in 'Siyasat', dated 2nd May, 1953, was to the effect that, the writer of Jai Hindi Reader was not a fit man for election. In the issue dated 9th May, 1953, the journal expressed satisfaction over the petitioner's defeat. These two articles indicate that, the journal wanted that Sri B. N. Pande should lose in the election. It has been admitted by one witness for the respondent that, Salamat Ali Mehdi came to Allahabad by train on the evening of 2nd May, 1953. Another witness for the respondent admitted that, Salamat Ali addressed one meeting before the polling day. The two articles in 'Siyasat' and Salamat Ali's visit to 'Allahabad just before the polling suggest that, Salamat Ali's visit had some connection with the pending by-election. The petitioner and respondent No. I were the main candidates in the field. These circumstances, therefore, raise a suspicion that, Salamat Ali's visit to 'Allahabad on the eve of the polling day was in the interest of Sri Kalyan Chand Mohile respondent. But suspicion, however strong, cannot take the place of proof. It is well established that the standard of proof required in the matter of a corrupt practice is the same as that in the case of a criminal charge (See Lyallpur Mohammedan Constituency case. Indian Election Cases by Doabia, Vol. I page 121). It is possible that, Salamat Ali was brought to Allahabad by some other person interested against the petitioner. The circumstantial evidence is not sufficiently strong to justify the conclusion that, Salamat Ali was the agent of respondent No. 1. We cannot overlook the fact that there was a third party in the field.

It is common ground that one, Mahabir Prasad started a fast below the Congress office towards the end of April, 1953. The man was removed to Colvin Hospital after a few days of his fast. According to the petitioner, the respondent was responsible for Mahabir Prasad's fast. Pamphlets were distributed in Mahabir Prasad's name attacking the petitioner's character. Finally, on the polling day a pamphlet was distributed to the effect that, Mahabir had died in hospital, and that in his dying message he had appealed to the electors not to vote for the petitioner. The respondent denied his responsibility for Mahabir's fast. The respondent also denied the distribution of pamphlets in this connection on or before the polling day.

According to the petitioner, pamphlets similar to appear Nos. 31A and 32A were distributed before the polling day. Paper No. 32A is the Urdu version of the Hindi pamphlet, paper No. 31A. The heading of paper No. 31A is: "Misdeeds of Sri Pande, the present Chairman of Allahabad Municipal Board". The writer of the leaflet charged Sri Pande for many evils, and requested for enquiry against him. It was said in the leaflet that, Sri Pande had misappropriated thousands of rupees. Towards the end of the pamphlet it was stated that, Mahabir Prasad was getting only Rs. 17 per month including dearness allowance. This political pension ought to be increased. The respondent's name was not mentioned in the leaflet. It makes no reference to the by-election at all. It seems that although the writer of the leaflet had his grievance against Sri Pande, the main object of issuing the leaflet was to get Mahabir Prasad's pension increased. The leaflet purports to have been printed at Desh Sewa Press, Allahabad.

Paper No. 36A is another leaflet, which purports to have been printed at Desh Sewa Press, Allahabad. The leaflet purports to have been issued by one Harsh Vardhan. According to the petitioner, Harsh Vardhan is a P.S.P. agent. It is denied on behalf of the respondent. The heading of the leaflet is: "Mahabir's death in Colvin Hospital". It was stated in the leaflet that, Mahabir had dted at 8-30 a.m. on 3rd May 1953 just after the commencement of the poll. It was mentioned in the leaflet that, the funeral procession would start from the hospital at about 2 p.m. According to the leaflet, Mahabir's last words were: "In order to give peace to my soul, electors of Allahabad City (Central) Constituency should not vote for Bishambhar Nath Pande, who is a sinner, a man of bad character and destroyer of cows". The date 3rd May 1953 was printed on the

leaflet. According to the respondent, no such leaflet was distributed on 3rd May 1953, and this document was subsequently fabricated by the petitioner for the purpose of this Election Petition. The two leaflets paper Nos. 31/A and 32/A have got folds. On the other hand paper No. 36A has not got such a fold. Paper No. 36A looks cleaner than paper No. 31A and 32A.

The petitioner produced ten witnesses to prove the defribution of these pamphlets and the circumstances of Mahabir's fast. These witnesses are Rajaram Yadav (P.W.6) Chunni Lal (P.W.8), Devendra Singh (P.W.11), Ram Chandra Vaish (P.W.12), Sri Kailash Narain Gupta (P.W.14), Panna Lal (P.W.16), Chhabinath Sharma (P.W.19), Krishna Chandra Vaid (P.W.28), Sri Suraj Bhan Singh (P.W.54) and the petitioner himself (P.W.55). The evidence of most of these witnesses has already been discussed. Raja Ram Yadav (P.W.6) was working as petitloner's polling agent. Krishna Chandra Vaidya (P.W.28) is a Congress worker from Phulpur. According to the petitioner's witnesses, the respondent was often seen with Mahabir Prasad during this fast.

Seven witnesses were examined for the respondent on this point. They are Chandra Dutt (D.W.2), Daya Shankar Malviya (D.W.11), Rajni Kant Varma (D.W.17), Jagannath Prasad Gupta (D.W.20), Sri Salig Ram Jaiswal (D.W.26), Chhote Lal (D.W.38) and the respondent (D.W.42). Rajni Kant Varma (D.W.17) was in charge of publicity work of P.S.P. He looked after printing of posters. He said that leaflets similar to paper Nos. 32A and 36A were not distributed on behalf of his party. The witness could not give the total number of posters distributed by the party. He admitted that Harsh Vardhan is a P.S.P. member. But the witness said that Harsh Vardhan did not bring out paper No. 36A. Rajni Kant Varma said that all the printing work was done at Prabhat Press. Jagannath Prasad Gupta (D.W.20) has got an electric store at Jawahar Square. The building is below the Congress office. He stated that Sri Salig Ram Jaiswal, Sri Kalyan Chand Mohile or his brother Kunnan did not visit Mahabir during the period of his fast. Nor did Harsh Vardhan Shukla visit Mahabir during the fast. The witness pays Rs. 2,000 as Income-tax. Chhote Lal (D.W.38) has also got a shop in Jawahar Square close to the Congress Office. He said that Harsh Vardhan Shukla or any other P.S.P. worker did not make any speech over a loud speaker near Mahabir during his fast. Chhote Lal does not belong to any party. His firm pays Rs. 3,000 as Income-tax.

The fact that Mahabir Prasad fasted for a few days below the Congress office has been admitted on behalf of the respondent. The leaflet paper No. 31A suggests that Mahabir Prasad was mainly interested in his pension. It is doubtful whether the leaflet paper No. 36A was at all distributed on the polling day as alleged by the petitioner. It is common ground that Mahabir Prasad is still alive. There is no satisfactory evidence to prove that, the respondent was responsible for Mahabir's fast or for the distribution of the leaflets paper No. 31A and 32A.

Besides the meetings in schedule 'D', the petitioner led general evidence to show that respondent's agents were making defamatory statements about the petitioner for several days before 3rd May 1953. The heading of schedule 'D' suggests that the petitioner was giving details of public meetings. The petitioner was not entitled to lead evidence on matters not specified in the Election Petition or the schedule. However, we may cast a cursory glance at the evidence about defamation in general. P.Ws. 6, 8, 11, 14, 19, 30 and 55 stated that respondent's agents and workers used to make defamatory statements about the petitioner from time to time. D.Ws. 8, 11, 12, 26, 27, 28, 37, 42, 43 and 48 denied that, any such defamatory statements were made about the petitioner. One cannot place much reliance on the oral evidence produced by the parties on this point. Petitioner's witnesses are all party men. No responsible and independent witness has been produced.

Now we proceed to examine the question whether the facts proved under this issue establish the charge of major corrupt practice under Section 123(5), R.P. Act 1951 against respondent No. 1. Section 123(5) of the Act is: "The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election". For establishing a charge under Section 123(5) four things have to be proved; (1) the publication by a candidate or his agent or by any other person with the connivance of the candidate or his agent; (2) a statement of fact which is false; (3) that he either believes it to be false or does not believe it to be true; and (4) that the statement is in relation to the personal character or conduct of any candidate.

The facts proved under schedule 'D' are that, articles directed against the petitioner were published in the 'Siyasat' of Kanpur on 2nd May 1953 and 9th May 1953, that Salamat Ali who is the editor of 'Siyasat' visited Allahabad on the night of 2nd May 1953 and addressed one or more meetings, that Salamat Ali's speech or speeches had some reference to the petitioner's candidature for the byelection, and that leaflets similar to paper Nos. 31/A and 32/A were distributed in connection with Mahabir Prasad's fast. In the 'Siyasat' dated 2nd May 1953 it was written that, the Congress candidate was the writer of Jai Hindi Reader, which mentioned that the Satan lives in mosques. On examining the book we find that the line in question does appear in Jai Hindi Reader. It is therefore difficult to say that the statement is false. The statement is no doubt capable of mischief; but falsity is another matter. We do not know whether the writer of the Article in 'Siyasat' had carefully read the whole poem 'Fatehpur Sikri'. A man seeing the particular line in the poem may come to the conclusion that the poem is offensive. The writer of the article in 'Siyasat' might be rash or careless. But it cannot be said definitely that, the writer of the article believed the statement to be fake, or did not believe the statement to be true. A person not sufficiently familiar with Hindi may reach the conclusion that, the particular line in the poem is offensive to Muslims. There is no satisfactory evidence to prove that, the writer of the article was written or Salamat Ali delivered speeches with the connivance of respondent No. 1.

Lastly, we have to consider whether the imputation was in relation to the petitioner's personal character or conduct. In 'Moinuddin Harris Versus Divgi' (Election Law Reports Vol. III Part 3, page 248), it was alleged against the petitioner who was a member of a Municipal Corporation that, he opposed the teaching of the Quran in Municipal Schools, and that if he were elected he would use his position and influence to stop the teaching of the Quran. It was held that the imputation related to his public character and to his conduct as a member of the Municipal Corporation, and not to his personal character or conduct. So the imputation did not amount to an offence under Section 123(5) of the Act.

In the present case the imputation against the petitioner was that, he had written a line to the effect that, "satan lives in mosques". No doubt the suggestion is offensive to Muslims. But if a person chooses to make an offensive observation about one religion, the charge does not relate to writer's personal character or conduct. The petitioner wrote a poem, and published it in a book which has been approved for use in public schools. The attack in 'Siyasat' was directed against the petitioner's literary activity and his religious views. To urge that the poet is incompetent or that the poet holds objectionable views on religion is not an attack on his personal character or conduct. So respondent No. 1 or the writer of 'Siyasat' or Salamat Ali is not guilty of a major corrupt practice under Section 123(5) of the Act.

It was urged for the petitioner that, if the writer of 'Siyasat' and Salamat Ali were not guilty under Section 123(5) of the Act, they are at least guilty of minor corrupt practice under Section 124(1) of the Act. Section 124(1) states: "The following shall also be deemed to be corrupt practices for the purpose of this Act:—Any act specified in clauses (1) to (8) of Section 123, when done by a person who is not a candidate or his agent or a person acting with the convivance of a candidate or his agent". We have been that, apart from the fact that it has not been proved that Salamat Ali or the writer of 'Siyasat' was an agent of respondent No. 1 or acted with his connivance, the petitioner could not prove other ingredients of Section 123(5) of the Act. So Salamat Ali or the writer of 'Siyasat' cannot be held guilty of the minor corrupt practice under Section 124(1) read with Section 123(5) of the Act.

Leaflets 31/A and 32/A contain many charges against the petitioner. One of the charges was that, the petitioner embezzled thousands of rupees from public funds. This imputation is highly defamatory. The petitioner stated on oath that these charges are false. The respondent did not prove that, the charges made against the petitioner in these leaflets are true. The leaflet contained a suggestion that, Sri Pande had misappropriated Rs. 9,000 from a certain fund. The person who made the charge must have known that it was false. The charge related to the petitioner's personal character and conduct. The statement was likely to have prejudiced the petitioner's prospects of election. But it has not been proved that Mahabir Prasad or the person who distributed these leaflets was an agent of respondent No. 1 or acted with the connivance of respondent No. 1. So the person responsible for the circulation of the leaflets paper Nos. 31/A and 32/A is guilty of a minor corrupt practice under Section 124 (1) read with Section 123(5) of the Act. We therefore hold that

corrupt practice under Section 123(5) has not been proved; but the commission of a minor corrupt practice by an unknown person under section 124(1) read with Section 123(5) of the Act has been proved.

Issue No. 11.—This issue has to be discussed with reference to schedule 'F' attached to the petition. Schedule 'F' consists of two parts. Part 1 is directed against the returned candidate, while part 2 is directed against the respondent No. 2. The petitioner did not press part 2 of schedule 'F'. So we have only to consider part 1 of schedule 'F'. Part 1 of schedule 'F' refers to the four meetings addressed by Salamat Ali on the night of 2nd May 1953. Evidence with respect to these meetings has already been discussed under issue No. 8. We found under issue No. 8 that, Salamat Ali who is the editor of 'Siyasat' came to Allahabad on 2nd May 1953, and addressed one or more meetings. Further, Salamat Ali's speech or speeches had something to do with the petitioner's candidature for the by-election. But one cannot place reliance upon petitioner's witnesses, when they state that Salamat Ali threatened that Musalmans voting for the petitioner would go to hell.

The charge under consideration falls under sub-section (5) of Section 124, R.P. Act, 1951. Section 124(5) runs thus: "Thus systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election". We have already referred to the case 'Moinuddin Harris Versus Divgi' (Election Law Reports Vol. III Part 3, page 248). It was held in that case that, the mischief which Section 124(5) aimed at preventing was the voting for or against a candidate only because of his religion, caste, race, or community. That being the real object of the section, Tribunals must put a restrictive interpretation upon the unduly wide terms of Section 124(5). It could not have been the intention of Legislature to prevent all references to religion in electioneering speeches when the right to conserve the culture of a section of the citizen is expressly conceded in the Constitution. The real intention of the Section was to prevent attacks on a particular religion, or a candidate only on the ground that he is a follower of a particular religion. Consequently an attack on a candidate on the ground that in his attitude on the question of the teaching of Quran he took a view which was against Quran or against Islam or against religion in general would not fall within the purview of Section 124(5).

It is wrong to suppose that, whenever a speech or an article involves some controversy about religion, the case falls under Section 124(5) of the Act. Section 124(5) does not forbid religious discussion as such. The mischief aimed at under Section 124(5) is canvassing on communal or religious grounds. If a person were to say that electors should vote for a certain candidate because the candidate and the electors were all Ahirs, this is a systematic appeal to vote on the ground of caste. Similarly, if a person were to advise electors that they should not vote for a certain candidate because the electors are Muslims while the candidate is a Hindu, such advice would amount to systematic appeal to refrain from voting on the ground of religion. Such appeals would fall within the scope of Section 124(5) of the Act. But in the present case it is not suggested that, Salamat Ali advised electors that they should not vote for Sri Pande, because the electors were Muslims and Sri Pande is a Hindu. The objection was to an act supposed to be against Islam, and not against the poet's personal religion. Presumably, Salamat Ali's objection would have been the same even if the poet were a Muslim. The article in 'Siyasat' dated 2nd May 1953 and the speech or speeches delivered at Allahabad by Salamat Ali did not amount to a minor corrupt practice under Section 124(5) of the Act. We hold that the returned candidate, or his agent, or his workers did not canvass on religious or communal lines as contemplated by Section 124(5) of the Act.

Connected with this issue is the question whether the respondent exercised undue influence through threat of spiritual censure. According to sub-clause (ii) of clause (a) of the proviso to sub-section (2) of Section 123 of the Act, whoever induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector.

In north Gaya Rural Constituency case reported in Indian Election Cases by Doabia, Vol. I, page 46, it was held that, it is only in the case of heads of religious orders, Gurus and Pirs who have an extraordinary influence over their disciples that their interference in voting amounts to undue influence. Sri R. N. Basu

appearing for the respondent argued that Salamat Ali was not a Pir or a head of a religious order. So any preaching by him to the effect that Muslims voting for Sri Pande would incur the wrath of God or would go to hell does not amount to undue influence.

Issue Nos. 4 and 5.—These two issues are connected. They have to be considered with reference to schedules 'B', 'C', 'D', 'E', 'F' and 'G', and paragraphs 8 and 9 of the petition. Schedule 'B' is the same as items Nos. 1 to 8 of schedule 'C'. Schedules 'C' 'D', and 'F' have already been discussed under issues Nos. 6, 8 and 11 respectively. Schedule 'E' refers to the pamphlets issued in connection with Mahabir Prasad's fast. This matter was also considered under schedule 'D'. According to schedule 'G', respondent No. 1, his agents and workers threatened petitioner's workers and supporters between the 2nd of April and 2nd of May 1953. The alleged threats to petitioner's agents and workers have already been considered. There is very little evidence to show that, electors were threatened by the respondent No. 1 or his workers.

We found under issue No. 6 that, there was some violence at certain polling stations. It was argued on behalf of the petitioner that, the respondent secured a majority of votes at those polling stations as a result of that violence. For example, Sri Sheo Kumar Pande was assaulted at Tonga stand Polling Station. At that polling station respondent No. 1 received 899 votes, while the petitioner got only 786 votes. Similarly, the petitioner's jeep was attacked at Saraswat Khatri Pathshala Polling Station. At this polling station the respondent No. 1 got 803 votes, while the petitioner received only 501 votes. As against this, Sri R. N. Basu pointed out that the respondent received more votes even at those polling stations, which were admittedly peaceful. There were 14 polling stations in the constituency. According to the petitioner, violence occurred at eight polling stations. No particular incident is alleged at polling stations Modern High School and Aftarsuiya. At Modern High School Polling Station, the respondent No. 1 secured 1539 votes as against 517 votes received by the petitioner. At Attarsuiya polling station the respondent No. 1 got 1211 votes as against 287 votes obtained by the petitioner. It cannot therefore be seriously urged that, the majority of votes obtained by the respondent No. 1 in the Constituency as a whole was the result of violent methods adopted by him. The total number of votes in the Constituency was 57,722. Out of them 21,432 electors went to poll. It means that 37 per cent. of the electorate in this constituency went to poll. Considering that the by-election was held in the month of May, the percentage of electors who went to poll cannot be said to be unduly low.

According to the petitioner, there was violence at as many as eight polling stations. No Presiding Officer, who worked at any of these polling stations, was produced on behalf of the petitioner. We may therefore take it that, these Presiding Officers were not prepared to support the petitioner's case that there was a reign of terror on the polling day. Two police officers were produced by the petitioner; but even these police officers do not lend much support to the petitioner's case. Sri Surajbhan Singh (P.W. 54) is the Station Officer of Kotwalt. He stated that Sri Pande sent a complaint to the Deputy Superintendent of Police. The Sub-Inspector received that complaint on the 5th of May, 1953. He made an enquiry. A final report was submitted, and papers were filed. Although there was a certain amount of violence at certain polling stations, it does not appear that the police arrested anybody in connection with the violence on the polling day.

Sri K. P. Srivastava (P.W. 57) is the Deputy Superintendent of Police for Allahabad City. He described the police arrangement on the polling day thus: "There were some 20 policemen including officers posted on duty at polling stations. There was an armed guard in each important polling station. •Each polling station was in charge of a Sub-Inspector. He was assisted by a Junior Sub-Inspector

at important polling stations, and an armed guard consisting of one head constable and three constables. There was a reserve force consisting of one Sub-Inspector, two Civil constables and two constables of armed police. This reserve force kept on moving between polling stations. Police arrangement for the by-election appears to have been adequate. According to Sri Srivastva, some people thought that voting had been stopped. But Sri Srivastva explained over a loud speaker that, that impression was incoirect, and that everybody was free to give vote. With the police arrangement described by Sri K. P. Srivastva, it is not possible to speak about a reign of terror. Barring a few incidents noticed under issue No. 6, the election was free. We therefore hold that, the petitioner and his workers were molested, assaulted and injured as discussed under issue No. 6, but the election was substantially free. There was no atmosphere of terror.

Issue No. 7.—The petitioner produced three witnesses to prove the charge of personation. Someshwar Nath Chopra (P.W. 5) stated that he detected one case of personation at polling station Attarsuiya. One Ram Das Ahir voted for one elector Lakshmi. Schedule 'H' gives a list of particulars on the charge of personation. According to item No. 4 of schedule 'H', one Sitaram personated for Lakshmi. But according to P.W 5, it was Ramdas who personated for Lakshmi. Rajaram Yadav (P.W. 6) stated that one Kishen cast his vote repeatedly. Kishen's name is not mentioned in schedule 'H'. Suraj Narain Chaddha (P.W. 7) also said that Ramdas Ahir tried to vote for Lakshmi Narain Thakur. It has already been mentioned that, the name of Ramdas was not mentioned in schedule 'H'. Ex. 26 is a copy of a judgment of a criminal court dated 23rd October, 1953. The indigment shows that one Krishna Kant was convicted for personation done on 3rd May, 1953. Krishna Kant's name was not mentioned in schedule 'H'. The four items mentioned in schedule 'II' have not been proved by the petitioner. So the charge that respondent No 1, his workers and agents were guilty of personation falls.

Issue No. 9.—The charge is that respondent No. 1 hired conveyances for electors. The petitioner produced two witnesses on this point. Kartar Singh (P.W. 10) stated that P.S.P. workers used to bring voters in rickshaws and motor cars. Kartar Singh was petitioner's agent at polling station Saraswat Khatri Pathshala. Pyare Lal Gupta (P.W. 18) also stated that voters were coming in rickshaws and cars arranged by P.S.P men. He said that he made a report about it. Ex. 28 is said to be a copy of the report made to the Presiding Officer. Ex. 28 purports to bear an endorsement by the Presiding Officer that he had received one copy. The Presiding Officer was not produced by the petitioner to prove that, such a report was given by Pyare Lal Gupta to the Presiding Officer. We find a list of a few rickshaws and cars in Ex. 28. Pyare Lal Gupta worked for the Congress in the by-election. The petitioner does not appear to have made any attempt to summon the original report alleged to have been made by Pyare Lal Gupta to the Presiding Officer. P.Ws. 10 and 18 are both interested witnesses. There is no reliable evidence to prove the charge that, respondent No. 1 or his workers or agents hired or procured conveyances for electors.

Issues No. 10, 12, 13 and 14.—These were not pressed on behalf of the petitioner. These four issues are decided against the petitioner.

Issue No. 15.—The question for consideration is whether Sri Sehat Bahadur, respondent No. 4 was wrongly impleaded in the election petition. Parties are agreed that, at one time Sri Sehat Bahadur was a candidate for the by-election, and that he withdrew his candidature within the prescribed period. The question is whether in these circumstances he should have been made a party to the Election Petition.

We agree with Sri Sehat Bahadur that, it was not necessary to implead him in the election petition, as he withdrew his candidature within the prescribed period. At the same time we cannot overlook the fact that, he was a candidate at one stage of the election. Different Election Tribunals have taken conflicting views on the question whether in such circumstances such a candidate is a necessary party or not. It is possible that the petitioner impleaded Sri Sehat Bahadur as a matter of caution. Considering that Sri Sehat Bahadur was a candidate for the election at one stage, it was not improper to implead him. We therefore hold that, although respondent No. 4 was not a necessary party in the election petition, he was a proper party. He was not wrongly impleaded. No relief was claimed by the petitioner as against him. So he is not entitled to any costs.

Issue No. 16.—Sri Kalyan Chand Mohiley (D.R. 42) stated that he had instructed his workers not to act irregularly or against rules. No printed instructions have an proved. The bare statement of the respondent ir not sufficient

for discharging the burden, that lay upon him under sub-section (3) of Section 100 of R.P. Act, 1951. We held that it has not been proved that respondent No. 1 took precautions to prevent illegalities and irregularities. However, no corrupt practices or illegalities or irregularities have been proved against respondent No. 1. So this issue has little practical importance.

Issue No. 17.—Section 100, R.P. Act, 1951, specifies the various grounds for declaring election to be void. Clause (a) of sub-section (1) of Section 100 applies where the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election. In the present case it has not been proved that, bribery or undue influence prevailed extensively at the election. Clause (b) of section 100(1) applies where the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section. Under issues No. 4, 5, and 6 we found that the election was substantially free. Clause (c) of Section 100(1) applies to the improper acceptance or rejection of any nomination. That is not the case of the present petitioner. So the present case is not covered by sub-section (1) of Section 100 of the Act. Sub-section (2) of Section 100 has got three c'auses (a), (b) and (c), clause (b) deals with any corrupt practice specified in Section 123. In the present case no major corrupt practice under Section 123 has been proved. So clause (b) of sub-section (2) has no application. Clause (c) of sub-section (2) deals with non-compliance with rules etc. There is no such complaint in the present petition. So clause (c) of sub-clause (2) also has no application.

Sri Jagdish Swarup appearing for the petitioner strongly relied upon clause (a) of sub-section (2) of Section 100 R.P. Act, 1951. Section 100(2)(a) is: "that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice", Clause (a) deals with three different cases: (1) the election of a returned candidate has been procured by any corrupt or illegal practice; (2) the election of a returned candidate has been induced by any corrupt or illegal practice; or (3) the result of the election has been materially affected by any corrupt or illegal practice. For the purpose of clause (a), the evil may be either a major corrupt practice or a minor corrupt practice. Under issue 8 we found that distribution of certain pamphlets about Mahabir's fast amounted to a minor corrupt practice under section 124(1) read with section 123(5) of the Act. We have to consider whether the election of the returned candidate should be declared void on account of the minor corrupt practice.

The first case contemplated by clause (a) of Section 100(2) is that, the election of a returned candidate has been procured by a corrupt practice. The second case contemplated by clause (a) of section 100(2) is that, the election of a returned candidate has been induced by a corrupt practice. In each of these two cases the returned candidate has to take some active part for securing his election through corrupt practice. In the present case we are not satisfied that, the returned candidate was responsible for distribution of the leaflets (paper Nos. 31/A and 32/A). So the present case does not fall under the first two parts of clause (a) of section 100(2) of the Act.

Now we have to consider whether the result of the election has been materially affected by the corrupt practice Different Election Tribunals have placed different interpretations on the phrase, "The result of the election has been materially affected". In Bellary Mohammedan Constituency case, reported in Indian Election Cases by Doabia Vol. I page 169, it was held that the words "the result of election" mean the names of the candidates in the order of sequence with the number of votes polled for each, and "materially affected" means that the majority of the returned candidate would have been materially reduced. On the other hand, in the Bhandara case, reported in Indian Election Petitions by Jagat Narain, Vol IV, page 22, it was held that the election cannot be said to be materially affected unless the irregularities which have occurred actually turned the scale in favour of the returned candidate. It must be shown that but for the irregularities a returned candidate would not have secured a majority of votes. It is not enough to show that the result of the election might have been affected. It must be shown that the result of the election was actually affected. Under the English law it is sufficient if the Tribunal finds that the irregularity was such as might have affected the result of the election. On this point Indian Law is different. Under the Indian Law a Tribunal has to come to a definite conclusion that, the result of the election has in fact been materially affected.

Recently, the phrase under discussion came up for interpretation before their lordships of the Supreme Court in the case 'Vashist Narain vs. Dev Chand', reported in 1954 A.I.R. (Suprem Court) page 513 Va that case it was found

that, the number of votes wasted on a certain candidate exceeded the margin of votes between the returned candidate and the candidate securing the next highest number of votes. It was held that, the figures did not necessarily lead to the inference that, the result of the election has been materially affected. The words "the result of the election has been materially affected" indicate that, the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate, but by a proof of the fact that the votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate.

The difficulty in interpreting the phrase "the result of the election has been materially affected" is partly due to the fact that, the same phrase occurs at several places in Section 100 of R.P. Act, 1951. According to the well settled canons of interpretation, a phrase occurring in different parts of the same section of a statute carries the same meaning.

The phrase "the result of the election has been materially affected" occurs in clause (c) of section 100(i) of the Act. This clause deals with a case of improper acceptance or rejection of a nomination. That situation arose in the previous case between the present parties decided by us last year. The case is "K. C. Mohiley versus B. N. Pande', reported in Election Law Reports, Vol. III, part II, page 125. In that case it was found that the petitioner's name was wrongly excluded from the list of validly nominated candidates. We hold that the result of the election must be presumed to have been materially affected. The same view has been taken by other Election Tribunals. In a case of wrong rejection of a nomination, the Tribunal does not predict that the returned candidate would not get re-elected upon a fresh election. In a case where a nomination is wrongly rejected, a qualified person is unable to contest the election, and the electorate does not get an opportunity to elect that particular person. In such a case it may be said that, there was no valld or proper election at all, and the improper rejection of the nomination has materially affected the result of the election. Cases falling under clauses (a) and (c) of sub-section (2) of Section 100 of the Act are of a different type. In such cases it is not possible to urge that, there was no valid election at all. What the petitioner urges in such a case is that, although there was a valid election, the election is vitiated by certain corrupt or illegal practices or irregularities of procedure. In such cases it is not enough to prove the commission of a corrupt or illegal practice or the occurrence of an irregularity. The petitioner has been materially affected by the corrupt or illegal practice or the irregularity of procedure. In a case of this type it is difficult to see how the result of the election can be materially affected except when the returned candidate. The present case falls under clause (a) of sub-section (2) of Section 100 of the Act. So the pra

The respondent No. 1 secured 11,746 votes. The petitioner obtained 7,778 votes. Respondent No. 1 won the election by a margin of 3,968 votes. The only corrupt practice proved in the case is the distribution of leaflets in connection with Mahabir's fast. These leaflets contained defamatory statements about Sri Pande. Sri B. N. Pande is an old resident of Allahabad. He was Chairman of the Municipal Board for nearly five years before the by-election. The public had ample opportunity to judge the petitioner's merits. We do not think that, the pamphlets distributed a few days before the polling day were likely to have much effect on the petitioner's prospects of election.

We have found that the article in 'Siyasat' or the speech or speeches of Salamat All at Allahabad do not fall within the prohibition of Section 123(5) or Section 124(5) of the Act. For the sake of argument we may assume that, the article in 'Siyasat' and speech or speeches by Salamat All amounted to minor corrupt practices under section 124 of the Act. We, however, are not satisfied that, such minor practices materially affected the result of the election. The article appeared in 'Siyasat' on 2nd May, 1953. Salamat Ali delivered a speech or speeches only a few hours before the commencement of the poll. We do not know the exact effect of the article and the speech or speeches. It is true that, there are thousands of Muslim voters in Allahabad. But it was difficult to

approach all or many of them at such a late hour. We have to remember that respondent No. 1 secured a majority of 3,968 votes. It is unlikely that, the effect of the article and the speech or speeches on Muslim voters was so much as to turn the scale in favour of the returned candidate. It has not been proved that, the result of the election has been materially affected by the corrupt practice proved in the case. So the returned candidate's election cannot be set aside.

No corrupt practice has been proved as against the returned candidate. It has not been proved that, the result of the election has been materially affected by the minor corrupt practice proved in the case. So the election of the returned candidate must stand, and the petition has to be dismissed. The petitioner should be ordered to pay the costs of the respondent No. 1. We assess these costs at Rs. 600. The petitioner made in the petition certain charges of corrupt practices against respondent No. 2. The petitioner failed to prove these charges. So respondent No. 2 is entitled to get his costs, which we assess at Rs. 100. Respondent No. 4 should bear his own costs.

(Sd.) V. G. OAK, I.C.S., Chairman.

The 25th August, 1954.

(Sd.) NIRAJ NATH MUKERJI, Member.

#### DISSENTING JUDGMENT

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Sri Babu Ram Avasthi (Member)

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The Election Petition No. 12 of 1953

Bishambhar Nath Pande.-Petitioner.

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K. C. Mohile and others.-Respondents.

I have had the advantage of reading the draft of the judgment of the Chairman. I am in agreement with the findings and opinions therein with the exception of those, on which I am recording my dissenting opinion in this judgment.

It has been argued on behalf of the respondent No. 1 (hereinafter referred to as the respondent) that in the trial of an election petition, the position of, the petitioner is that of the prosecutor and the position of the successful candidate is that of an accused in a criminal trial, and, therefore, the evidence of the petitioner should be seen and scrutinised in that light. But to my mind there is no justification for such a proposition now, after the passing of the R.P. Act, 1951, even though there may have been some when the trial of election petitions was governed by orders and rules framed by the Government. Section 90(2) of this Act lays down: "Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits" and sub-section (3) lays down: "The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of election petition". These two provisions leave no room for doubt that the trial of election petitions is just like that of ordinary suits in Civil Courts. There is no indication anywhere in the Act that the petitioner in an election petition has greater burden to discharge in order to prove the facts alleged by him in his plaint. In the case of suits, the defendant cannot say that there is no burden upon him of any fact and that every fact, whether it be positive or negative, must be proved by the plaintiff. The burden of some facts or some issues in a Civil suit always lies on the plaintiff, whereas the burden of proving other fact or issues lies on the defendant, and if on a certain point both the parties have produced evidence, the court has only to weigh the whole evidence and to find which of the two versions is correct. In such a case the question of burden of proof loses all its force. But not so in criminal cases due to a presumpt

trial if the prosecution wants to prove certain facts by mere circumstancial evidence, then the fact will be deemed proved only if every other possibility is ruled out, except the one set up by the prosecution. The same thing, however, cannot, in my opinion, be said about decisions in civil suits.

It is true that it was often held before the coming into force of the Representation of the Peoples Act of 1951, that in the course of trials of election petitions, the petitioner was in the position of the prosecutor and the successful candidate (the respondent) was in that of the accused, hence some of the Tribunal constituted under the present Act have followed the old rulings on this point. But now the opinion seems to be veering round. For instance, the point was considered by the West Bengal Election Tribunal, in Sidhansu Sekhar versus Satyendra Nath Basu and others, published in Vol. IV of the Election Law Reports at page 73, where both the rulings for and against this view have been considered. For the former view four cases have been mentioned (1) Khelwal Mohammadan Constituency Case, Sen and Poddar page 375, (3) Lyallpur Mohammedan Constituency case, Sen and Poddar page 376, (3) Lyallpur Mohammedan Constituency case, Sen and Poddar page 764. For the contra'v view the following have been quoted: (1) Nasiruddin Ahmad vs. Haji Mohammad Yusuf, (1936) I.L.R 63 Cal. 825, which, following some Englis'i cases, held that the allegations of corrupt practices in an Election Petition are not in the nature of criminal charges and need not be proved with the same strictness; (2) The Norwich Case, 1 O'M & H 10, in which Baron Martin observed: "I am not trying a criminal case, I am trying a civil case and the rules applicable to a civil case are, I apprehend, the rules applicable to this case". The West Bengal Election Tribunal, therefore, agreed with the contention for the petitioner that the trial of the election petition is essentially a civil trial and the evidence should be considered as in a civil case.

This difference in the change of outlook has led me to differ from the majority judgment as regards the decision of some facts. I now proceed to give my view of the facts on which I am differing

Issue No. 6.—(1) The incident at the Tonga Stand Polling Station on May 3, 1953. There Sri Shiv Kumar Pande, the polling agent of the petitioner was thrown on a brick fencing. The Petitioner's case is that he was thrown by the P.S.P. men. The Respondent denied the incident altogether. Only the President of the P.S.P. party, Allahabad, Sri Salig Ram Jaiswal D.W. 26 halfheartedly admitted the incident when he said in reply to a court question, "Next day I learnt that there was some scuffle and Sheo Kumar Pande was injured". The petitioner alleged this incident in his petition and gave evidence that Sri Shiv Kumar Pande was bodily lifted and thrown by the P.S.P. men. The respondent denied the incident altogether and produced as witnesses to say that there was no such incident. But the incident has been proved by reliable evidence. It is not open, to my mind, for the respondent now to argue, without any evidence and without any basis whatsoever, that Sri Sheo Kumar Pande must have been thrown by some stranger or some personal enemy of his. The Tonga Stand Polling Station is in the hearst of the city and there were many of his workers and supporters and P.S.P. men there at the time when the incident occurred. It was open to the Respondent to give evidence as to who threw Sheo Kumar Pande on to the Drick fencing. But the respondent has produced no evidence. Shri Sheo Kumar Pande is a pleader, is an M.L.A. and was working as the polling agent of the petitioner, a candidate of the congress party, which had many supporters, volunteers, sympathisers and workers there as at other polling stations. In such circumstances it is not reasonable to assume that it was the act of a stranger or a personal enemy of Sri Sheo Kumar Pandey. A personal enemy cannot choose a worse time and place to wreck his vengeance, for he knew that there were dozens of friends and sympathisers of the person he was attacking. Such a daring act can be done only by a person who thinks he is equally matched. Hence I believe the petitioner's evidence and

(2) Saraswat Khatri Pathshala Incident. This occurred on the 3rd May, 1953, while the polling station was in full swing. The petitioner had gone to this polling station at about 4 p.m., when some P.S.P. men, according to P.W. 18 Pyare

Lal Gupta, came from the P.S.P. camp and shouted that Pande Ji (i.e., the petitioner) should be surrounded and beaten. Those men threw brickbats on Pande Ji and when his driver wanted to turn the handle of the jeep, the handle was snatched away. It was recovered from them and then the jeep started. After a while one man lay in front of the jeep. The driver saved that man and proceeded, but the crowd chased the jeep, and went on throwing brick-bats on it which hit the petitioner and other witnesses. This incident has been denied by Sri Agha M Shibtain (D W. 15) who was respondent's polling agent at that station, and Sri Desh Raj (D.W. 14). After considering the entire evidence, I am of the opinion that the incident did occur and it were the P.S.P. men who came out of the P.S.P. camp and attacked the petitioner near this polling station. But the the causing of injury, the attack on a candidate and his workers is no corrupt practice and there is no penalty for it under the R.P. Act, 1951.

Issue No. 8.—(3) Paragraph 8(b) and paragraph 10(c) of the petition contains charge of false statement against the personal character and conduct of the petitioner which is alleged to have been made by the respondent or his workers at his instance or with the connivance of the respondent or his agents. In several meeting. The details are given in schedule D. This schedule contains particulars of five meetings and the names of other places where defamatory statements were made and it also refers to four meetings addressed by Sri Salamat Ali. As a separate sub-heading it gives details of three false publications which are alleged to contain defematory matters against the petitioner. They are (1) The Issue dated 2nd May, 1953 of the Siyasat Jadid, an Urdu daily of Kanpur, (2) a pamphlet—31/A in Hindi and 32/A in Urdu—purporting to have been issued by one Mahabir Prasad and, (4) a pamplet, 36A, published by Harsh Vardhan. The four meetings alleged to have been addressed by the editor of the 'Siyasat' were held (according to schedules D and F) at Minhaipur, Sarai Garha, Kolhan Tola and Hasan Manzil. All these meetings and defamatory statements have been denied in toto by the respondent who also asserted that even if any of them is proved, he is not responsible for it. So the Tribunal has to find if any of these defamatory statements were really made and published and if so, whether the respondent is responsible for any of them.

I am unable to agree with the majority view regarding three, out of the four, meetings addressed by Salamat All and regarding two papers, i.e., the article in the 'Siyasat Jadid', dated the 2nd May, 1953 and Mahabir's pamphlet in Hindi (31/A). My reasons are these.

I first take up the four meetings alleged to have been addressed by Sri Salamat All. The very existence of these meetings was denied by the respondent in his written, 'atement. But one of his witnesses, Inamatullah (D.W. 11) admitted the arrival of Salamat Ali on 2nd May, 1953 by the evening train at 7 or 7-30 p.m. and another witness of his, Abdul Rashid (D.W. 48) admitted that he and Salamat Ali addressed the election meeting. It appears that originally it was thought expedient to deny the existence of these meetings but after nearly a dozen of the petitioner's witnesses had been examined to prove their existence and after the S.O., Kotwali, Sri Suraj Bhan Singh (P.W. 54) had deposed that on 2nd May, 1953, he received a message over the telephone at about 10-30 p.m. that the editor of the 'Siyasat' was going to address a meeting of Shias in Rani Mandi, it was thought necessary not to stick to the original denial and to admit the existence of the meetings, but to give a new turn to them. Accordingly, we find that P.W. 41 was produced to admit the arrival of Sri Salamat Ali Mehdl on the 2nd May, 1953 at about 7 p.m. and to depose that he (Sri Salamat Ali) had come in connection with the Muslim Convention. Now I take up these meetings one by one. The first meeting is alleged to have been held in Mohalla Minhajpur. The petitioner has produced two witnesses to prove this meeting, i.e. (1) Mohammad Saddiq of Phulpur (P.W. 34) and (2) Kallu Khan (P.W. 45). The former deposed that he was a member of the All India Momin Conference from 1936 to 1950 and was President of the Phulpur Momin Association. His present President advised him to help the Congress candidate in the by-election. So he came to Allahabad one week before the polis and then on the 2nd May. He attended the Muhajpur mosque. The 2nd witness Kallu Khan is the Secretary of the Jamait-ul-cleme and worked for the petitioner in this by-election. He says that he attended this meeting at 9-30 p.m. when Sri Salamat Ali Mehdi was addressing it, during the course

his creditability and not to detract from it. Had he been an ordinary witness he would have denied his membership. Hence I have no hesitation in believing the statement of these two witnesses and in finding that there was a meeting at Minhajpur in which Sri Salamat Ali Mehdi spoke and said that nobody would vote for a man who had declared that the Satan lived in mosques, that the petitioner was the enemy of God and that anybody voting for him would incur the wrath of God,

The second meeting is alleged to have been held at Sarai Garha. I agree with the majority judgment that the petitioner's evidence to prove this meeting is not convincing.

The third meeting is alleged to have been held at Mansur Park near Roshan Bagh at about 10 p.m. and was addressed by Sri Salamat Ali Mehdi. The petitioner produced three witnesses to prove it, i.e., Mohammad Islam (P.W. 25), Munir Uddin (P.W. 33) and Abdul Hamid (P.W. 39). They say that it was a political meeting called at the instance and for the benefit of the respondent. The announcement of the meeting had been made over a loud speaker and otherwise also, by a person with a P.S.P. flag in the day. At the meeting the speaker Sri Salamat Ali Mehdi told the audience that no other political leader had ever published such offensive matter as was contained in the poem Fatehpur Sikri in the Jai Hind Reader, published by the petitioner and that those who would vote for the petitioner would not get a place in Jinnat, but would go to Dozak (hell). They also deposed that the respondent thanked Sri Salamat Ali for his speech. As against these witnesses, the respondent has produced Mohammad Yasin (D.W. 44) and Abdul Rashid (D.W. 48) to say that it was a meeting in connection with a Muslim Convention. The former witness said so in his examination-in-chief, whereas the latter said so in rorss-examination. This (last) witness admitted that he and "Salamat Sahab" addressed the election meeting. It has been argued for the respondent that the word Salamat All recorded in his deposition was not correct and that it should be "Salim Sahab". I conceded that to err is human and the possibility of a mistake in the court's records cannot be ruled out. But there should be some reason to suppose and some basis to be seen whether it was an election meeting. I addressed the meeting or 23rd April, 1953 also." The existence of the meeting being an admitted fact, it is the seen whether it was an election meeting of the meeting or 23rd April, 1953 also." The existence of the meeting being an admitted fact, it is the seen whether it was an election meeting of the sown and the pelicioner's witnesses in cross-examination—and there were 59 of th

The fourth meeting alleged by the petitioner to have been addressed by Sri Salamat Ali Mehdi was held at Hasan Manzil. M. Naim (P.W. 31) and Mohammad Yahia Ansari (P.W. 43) have been produced by the petitioner to prove that a meeting was held there at about midnight between the 2nd and 3rd of May. According to these witnesses, Sri S. A. Mehdi told the audience that the petitioner had attacked Islam and had composed a poem to the effect that the Satan lived in mosques and enquired from the Muslim audience whether they would vote for such a man. He also informed them that any person voting for the petitioner would incur the wrath of God. The existence of this meeting has been admitted by Inamullah (D.W. 41) who deposed that he saw Sri Salamat Ali Mehdi when he alighted at the Allahabad station on the 2nd May, at 7 or 7-30 P.M. He deposed in cross-examination that he had heard that Sri Salamat Ali addressed

meetings at Roshan Bagh and Hasan Manzil. The respondent has produced D.W. 28 Bashir Ahmad who deposed "to my knowledge, Salamat Ali did not address any meeting on the 2nd May". The respondent himself, in the witness box, has denied having joined any meeting addressed by Sri Salamat Ali. As the existence of this meeting is admitted by one of the respondent's witnesses, I feel safe in holding that a meeting was held at Hasan Manzil at about midnight between the 2nd and 3rd of May, 1953. The fact that a meeting on the day of the polls had been prohibited by the Executive authorities does not, to my mind, make the existence of this meeting improbable, because if a meeting had been started before midnight the probability is that it was continued for a short time even after midnight.

Now the question comes up how Sri Salamat Ali Mehdi appeared at Allahabad just a night before the polls. Did he come of his own accord? Did he come at the invitation of somebody? If so, at whose invitation? The Siyasat Jadid, dated the 2nd May, 1953, published the Allahabad letter, dated 30th April, 1953, under a big heading (inserted, of course, by the editor) "In the Jai Hind Reader" prescribed for the U.P. Schools is written that Satan lives in mosques.....". This heading gives a substance of the letter printed below it. This letter ostensively purports to have been written by somebody at Allahabad on the 30th April, 1953. It quotes two lines from a poem 'Fatehpur Sikri' printed in the "Jai Hind Reader" published by the petitioner. They are these

Mere Mandir men hari rahata Teri masjid men rahata shaitan Mandir men jiwit Shankhdhwani Masjid men bejan ajan.

It omitted to quote the next two lines and this omission changed the meaning and sense of the poem. It was certain to cause a great mischief. These lines are:

Ram Juda Rahman Juda.
Is chhal ki ganth na khol sake.
Apani manawata ki kimat.
Ham na hridai men tol sake.

The letter is neither in good taste, nor in sober language, to say the least of it. It misrepresents the petitioner as an anti-Muslim of the deepest dye. It had been sent from Allahabad and still it says that the writer of the letter had just received the book 'Jai Hind Reader' by post that day. It is rather strange that a person living at Allahabad says that he had received this book by post, for the book has been published at Allahabad by a well known Publisher, in 1950, and was available during these years. If all the four lines of the poem (which are in the midst of a lengthy poem of over hundred lines) are read together they say that anybody who says that God lives in temples and Satan lives in the mosques does not do justice to the humanity. But if the last two lines are omitted, they give an impression just the reverse and lead to the inference that the poet says "God lives in my temple and Satan lives in the mosque". Can it be assumed that a person who has before him the poem "Fatchpur Sikri' (consisting of over a hundred lines) read only two lines in the middle (the 81st and 82nd) and did not read the next two lines just following. I think not. If nothing else, the mere curiosity would have impelleged any reasonable man to read further at least a few lines. It is impossible to believe and it is against all probabilities that a person reading the poem will happen to cast his eyes only on eighty-first and eighty-second lines and then would stop short. The tenor of the letter indicates as if these two lines are the only lines in the poem 'Fatchpur Sikri' and hence I am sure that the writer of the letter omitted to quote the next two lines mischievously and without any reasonable justification—only to mislead the readers. The letter was written at Allahabad on 30th April, only three days before the polls. It condemns the Congress candidate for the by-election. Hence it cannot be presumed that it has been written by an ordinary personal enemy of the petitioner.

If a Muslim editor receives a news which is likely to offend the feelings the Muslim community, it may be natural that he would publish it in his paper. But is it also probable that such an editor would take it to his head to run at once to Allahabad to address meetings therein the night, of his own accord, at his own expense, uninvited and uncalled for? I am of the opinion that the editor did not come to Allahabad of his own accord. Had he come of his own accord, a heavy programme of three or four meetings just after his arrival could not have been arranged unless there was previous arrangement for, and an announcement of the meetings at least a few hours before. There is positive evidence that these meetings were attended by several hundred Muslims, which was impossible

but for previous announcement. The fact that at least two meetings were held the same night is now admitted by two witnesses of the respondent. Hence I rule out the possibility of the editor coming to Allahabad of his own accord.

Had someone at Allahabad invited Sri Salamat All Mehdi? If so, who can he be? Was it the third party, the Jan Sangh who had set up Dr. Murlidhar, Respondent No. 2 or was he some enemy of the petitioner? To my mind, both these suggestions are beyond the range of probability. There is no evidence at all to show that Respondent No. 2 or his party ever took the election seriously, which also appears from the result of the election in which he received less than two thousand votes, whereas his rivals received over 11,500 and 7,200. There is no evidence either that the Respondent No. 2 had any enemity or bitterness against the petitioner so as to beat him down at all costs, without increasing his own chances of success. Of course, the editor did not publish the name of the writer of the letter and has left us to guess the best we can.

Then remains the possibility of some personal enemy of the petitioner having invited Sri Salamat Ali to come to Allahabad. If such were the case, the P.S.P. party who put in a tough fight in this case would have surely not kept mum and would have put forward some such suggestions and in any case would have summoned Sri Salamat Ali as its witness, to depose that the letter had not been written by a P.S.P. man, and that he had not been invited to Allahabad by this party. Sri Salamat Ali Mehdi was received at the Allahabad Railway Station by the respondent and the President of the P.S.P. on the 2nd May, 1953, the respondent accompanied Sri Salamat Ali from meeting to meeting and thanked him at the meetings and the Sayasat, dated the 2nd May, 1953, was distributed by the P.S.P. workers (vide P.Ws. 8 and 33). All this goes to establish that the said party was at the bottom of sending the letter published in the 'Sayasat' of the 2nd May, 1953 and for inviting Sri Salamat Ali to come to Allahabad. Of course, the petitioner could not be expected to summon him as his witness. Hence there is no possibility of an invitation to the editor of the 'Sayasat' from anybody except the P.S.P. Moreover there is positive evidence that the respondent was himself present at the railway station to receive the editor and attended at least some of the meetings addressed by the editor. Had it been a case of a serious criminal change, a criminal court might be justified in assuming that there was a possibility—it may a remote possibility—of some stranger having committed the crime. But this is not a trial of a criminal case, for I have already expressed my view at the commencement of this judgment that the Legislature had ordained in express terms that an election petition will be tried like a civil suit. In the Civil suit the court has, after both the parties which have cared to produce evidence, have done so, to decide which of the versions or theories set up by the parties is correct. It is no business of the Tribunal to set up a new c

For these reasons and considering all the facts and circumstances, I am of the opinion that Sri Salamat Ali Mehdi the editor of the Savasat Jadid, was invited or brought to Allahabad by the respondent or his party, that is, his agents and workers or at any rate with their connivance. The respondent will, in my opinion, be responsible for what the editor said and gave out at the meetings addressed by him in the night of 2nd May, 1953, as held by the Calcutta High Court in I.L.R. 63, Cal. 825, referred to above. Yet there is a serious question to consider as to what the editor said in the meetings and specially whether he said that the petitioner was the enemy of Islam and any person who would vote for him would incur the wrath of God or would go to hell. The evidence on the record is all one way to the effect that he expressed those sentiments and expressions. In Election speeches the Government and the police are not particularly interested, for they are against the Government and so the speakers think that they can say with impunity whatever they like and if a person, after publishing the mischievous letter the previous night, comes to Allahabad, it is more than probable that he was not in a very sober mood with a well balanced and judicious mind. Hence I do not see any reason to disbelieve the petitioner's witnesses who attended those meetings, heard those words and reproduced them or their substance before the Tribunal. It is true that many of them belonged to the Congress party, but that will be no justification for disbelieving them when there is no evidence to the contrary that those words were not uttered. Those words were put in the forefront in the plaint in Schedules D and F and the respondent had a chance to meet them, if so advised, by producing persons who had attended this meeting to contradict the petitioner's version. The respondent, however, adopted the course of first denying the existence of those meetings and then producing evidence to the effect that those meetings were in connection with a

I am of the opinion that Sri Salamat Ali Mehdi told his audience in the meetings held in the night between the 2nd and 3rd May, 1953 that the petitioner had written a poem in which it was said that Satan lives in the mosque (a statement which is entirely false) and that any voter who would vote for the petitioner would incur the wrath of God and would go to hell, or words to that effect.

Then the last question in this connection is whether the respondent is responsible for these utterances which come within the definition of undue influence given in the proviso (ii) to sub-section (2) of section 123 of the R.P. Act, 1951. This sub-section lays down that any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or any person with the connivance of the candidate or his agent, with the free exercise of any electoral right to vote in "undue influence", and that if any such person who induces or attempts to induce an elector to believe that he will become an object of divine displeasure or spiritual censure shall be deemed to interfere with the free exercise of the electoral right of such an elector, within the meaning of this clause.

I have already recorded a finding that Sri Salamat Ali Mehdi came to Allahabad at the instance of the respondent or the members of his party (who must be held to be his agent) or at least with their connivance and told the audience that anybody who would vote for the petitioner would incur the wrath of God and would go to hell. Hence I cannot but hold that the respondent is responsible for those utterances and that he, therefore, committed the corrupt practice of undue influence defined in section 123(2) of the R.P. Act, 1951.

responsible for those utterances and that hc, therefore, committed the corrupt practice of undue influence defined in section 123(2) of the R.P. Act, 1951.

There is one more point of fact under Issue No. 8 on which I am unable to agree with the majority judgment. It is as regards the distribution of pamphlets like paper No. 31/A, purporting to be issued by and over the signature of Mahabir Prasad. A copy of it in Urdu is 32/A. It is common case of the parties that one Mahabir Prasad undertook a fast in the last week of April 1953, in order to get redress of his grievance, one of which was personal and the others public. Mahabir Prasad lay fasting at the foot of the staircase leading to the Congress office in the city of Allahabad from about 25th April, 1953. Then those pamphlets 31/A and 32/A are alleged to have been published and distributed by the P.S.P. men, according to the contention of the petitioner. Paper No. 31/A contains a very defamatory statement against the petitioner. It was said therein that the petitioner should render account of a sum of Rs. 9,000 deposited with him as martyr's fund and that there is a defalcation of two lacs of rupecs in the Octroi Department of the Allahabad Municipal Board for which the Octroi Superintendent and other officers responsible for it should be dismissed, and an enquiry be made. There are other matters in it which are not relevant for the present purpose. The last grievance mentioned in the pamphlet is that his pension is only Rs. 17 p.m. which should be increased, as it is not enough to keep his body and soul together. Who got this pamphlet 31/A printed, cannot be ascertained from the evidence on the record, but there is evidence regarding its distribution before the polling day. It is unnecessary for me to say whether Mahabir Prasad undertook the fast on his own account or at the suggestion or instigation of the P.S.P. or any of the agents of the respondent. Undertaking a fast is not a corrupt practice, nor is the spread of a canard that any person has died on

The petitioner has produced several witnesses to prove that P.S.P. men distributed the pamphlets 31/A before the polling day. I may refer to the deposition of Kailash Narain Gupta (P.W. 14) who is the President of the District Congress Committee, Allahabad and who was a zamindar paying about Rs. 25,000 as land revenue and paid Income-tax from Rs. 950 to Rs. 6,500. He deposed, "On the 27th, I noticed that Mahabir Prasad was fasting in front of the Congress Office, P.S.P. worker, Harsh Vardhan gave me a leaflet. The leaflet was similar to paper No. 31/A". The fact that Harsh Vardhan is a member of the P.S.P. is admitted by Rajni Kant Varma (D.W. 17) who is the editor of a number of journals and was, according to his own deposition, in charge of the publicity work of the P.S.P. and looked after the printing and publicity and distribution

of P.S.P. posters. The other witness upon which I can rely on this point is the petitioner himself as P.W. 35. He deposed as follows:—

"The pamphlets issued by the P.S.P. and collected by my workers have been filed by me. They are paper Nos. 31/A and 32/A, 33/A and 36/A of list 26/C". In cross-examination he says "I got paper No. 31/A, 32/A, 33/A and 36/A from my office. The office Secretary gave me these papers. I saw Harsh Vardhan distributing leaflets like 31/A and 32/A. I did not see the distribution of 33/C and 36/C. I saw the distribution of 31/A and 32/A about the 26th or 27th April. Harsh Vardhan was distributing his leaflets about the time of my talk with the respondent near Mahabir. 32/A appears to be an Urdu version of 31/A".

There is one very important circumstance on account of which I feel safe to believe the petitioner's witnesses and to hold that 31/A was distributed on behalf of the respondent. D.W. 17 Rajm Kant Varma has appeared for the respondent and the following paragraph from his statement shows that he denied the distribution of 32/A, 33/A and 36/A, but did not deny the distribution of 31/A. Here are the first few lines of his deposition. Pamphlets like paper 36/A of list 26/C were not distributed on our behalf. Nor leaflets 32/A were distributed on our behalf, nor 33/C. The leaflet 31/A is certainly an attack on the personal character of the petitioner. It is true that there are other D.Ws. who denied the distribution but that can have no importance because other persons could only say that they did not see the P.S.P. men distributing pamphlets like 31/A and even if ten persons say that they did not see the distribution of certain pamphlets, it does not prove that the pamphlet was not distributed when there is positive evidence that it was distributed and by a certain agency.

Hence I am of the opinion that the P.S.P. men had a hand in the distribution of leaflets like 31/A. If the P.S.P. men distributed them, it must be held that they were distributed by the agents of the respondent, or in any case with the connivance of the respondent and his agents. The distribution of leaflet 31/A comes within the definition of a major corrupt practice as defined in sub-section 123(5). I have already said that the pamphlet 31/A is highly defamatory of the petitioner's personal character and conduct. In the majority judgment also this pamphlet has been held to be defamatory, containing a statement of fact, which is false and which the writer either believed to be false or did not believe to be true, in relation to the personal character or conduct of the petitioner. The only point upon which I differ is that in my opinion the respondent's agents had a hand in its distribution which brings it within the meaning of "publication" used in sub-section (5) of section 123 of the R.P. Act, 1951.

I have already found that the 'Siyasat Jadid' in its issue of the 2nd May, 1953, published (1) a false statement contained in a letter from Allahabad, to the effect that the petitioner's poem 'Fatehpur Sikrı' contained two lines saying that God lived in Hindu temples and the Satan lived in Mohammadan mosques, and (2) no Muslim should vote for the petitioner as he was anti-Muslim. I have also found that Sri Salamat Ali in his speeches repeated similar expressions and also advised the Muslim voters, (3) that any one who would vote for the petitioner would incur the wrath of God and would go to hell.

Now I have to consider if any of these statements comes within the purview of section 124(5), which runs as follows:—

"The following shall also be deemed to be corrupt practices for the purposes of this Act,

- (1) ...,...
- (5) The systematic appeal to vote or refrain from voting on grounds of caste, race, community, or religion, or the use of, or appeal to, religious and national symbols......for the furtherance of the prospections of a candidate's election."

Hence I have to see whether any of the above statements is "an appeal to community or religion" and "Whether any of them made use of a religious symbol". I am of opinion that each of them is an appeal to either community or religion and the mention of temples and mosques is certainly "the use of, or an appeal to, the religious symbols", for a temple is a religious symbol and so is also a mosque. I am unable to accept the contention that the expression "do not vote for the petitioner as he has composed an anti-Muslim poem or is anti-Islam" is not an appeal to religion. The negative expression "do not vote for my adversary" stands on the same footing as the positive expression "vote for me because I am a Muslim". The former expression is hit by the words "appeal to refrain from voting" and the latter by the words "appeal to vote".

The argument for the respondent is that these words in sub-section (5) should not be taken literally but should be interpreted in such a manner as to bring them in line with the Constitution of India, Articles Nos. 14 and 15 I see no force in this contention. The most important and cardinal rule of interpretation of Statutes is to interpret the language of the Act literally and usually not to depart from it. The underlying principle is that the intention of the Legislature should be gathered only from the language used by it and courts should not speculate about the intention of the Legislature. The Privy Council laid down the rule over and over again during the last hundred years that the language of the Act alone should be considered irrespective of the policy of the Legislature and the courts cannot add to it or make up deficiencies and must give effect to the plan meaning of the words used, if the language is clear.

Robert Wigram Crawford V. Richard Spooner (1846) 4 M.I.A., 179 at 187.

Abhi Ram Goswami V. Shyama Charan, I.L.R. 36, Calcutta, 1003.

Annie Besant V. The Advocate General of Madras (1919), I.L.R. 43, Madras, 146. The Privy Council also laid down that courts should not speculate as to the intention of Legislature when the words of the Act are clear.

Banwari Lal V. Mahabir Prasad (1873), I, Indian Appeals 89, at 104.

Narendra Nath Sarkar V. Kamal Basni (1895), I.L.R. 23, Calcutta, 563.

Our Supreme Court has laid down the same rule of interpretation, in

The New Piece Goods Bazar Company Ltd. V. The Commissioner of Incometax, 1950, S.C., Reports 553, where it is observed,

"It is elementary that the primary duty of a court is to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention."

If the provisions of sub-section (5) of section 124 were in any way or to any extent, inconsistent with or repugnant to any of the fundamental rights guaranteed by the Constitution, I would have departed from the rule of literal construction. But I do not see any such inconsistency or repugnancy, nor any has been pointed out to the Tribunal on behalf of the respondent. Hence I stick to the literal meaning of sub-section (5) and hold that the statements given above do come within the mischief aimed at by sub-section (5) and must be deemed to be "corrupt practice" as defined by section 124(5) of the R.P. Act, 1951.

Here I should note that in the case of "appeal to vote......on grounds of community or religion" the appeal must be systematic, *i.e.*, repeated, but in the case of "the use of, or appeal to, religious symbols" it need not be (on the language of sub-section 5) systematic and a single instance is enough to bring it within the definition.

I would, therefore, hold that the Respondent No. 1, the successful candidate has also committed a corrupt practice as defined in section 124(5), R.P. Act, 1951.

On the findings recorded by me above, I am of the opinion that the corrupt practices as defined in sub-sections (2) and (3) of section 123 of the R.P. Act, 1951 and also a corrupt practice defined by section 124(5) has been committed by the Respondent No. 1, the returned candidate, I would therefore, allow the petition and declare the election of the Respondent No. 1, the returned candidate, to be void.

(Sd.) BABU RAM AVASTHI, Member,

The 25th August, 1954.

Election Tribunal, Allahabad.

## ORDER

## (By the Tribunal)

In accordance with the opinion of the majority of the members of the Tribunal, the election potition is dismissed. Under section 99, R.P. Act, 1951, we record that no corrupt or illegal practice has been proved against Respondent No. 1 or against Respondent No. 2.

The petitioner shall pay Respondent No. 1 Rs. 600 as costs. The petitioner shall pay Respondent No. 2 Rs. 100 as costs. The petitioner shall be entitled to get a refund of the balance (Rs. 300) of his security deposit (Rs. 1,000).

(Sd.) V. G. OAK, I.C.S., Chairman. (Sd.) N. N. MUKERJI, Member.

(Sd.) Babu Ram Avasthi, Member.

The 25th August, 1954.

### APPENDIX 'A'

## ELECTION PETITION No. 12 of 1953

#### ORDER

Sri Kalyan Chandra Mohile, Respondent No. 1, was declared to have been elected to the U.P. Legislative Assembly from Allahabad City (Central) Constituency as a result of the by-election held in May 1953. This election has been challenged by Sri Bishambhar Nath Pande petitioner on a variety of grounds. One of the grounds taken in the petition is that the electoral roll, on the basis of which the by-election was held, was not a valid electoral roll at all. Certain defects in the preparation of the electoral roll have been specified in paragraphs 4 and 5 of the petition. Respondent No. 1 in his written statement denied that, there were any such defects in the electoral roll. Further, Respondent No. 1 challenged the petitioner's right to question the validity of the electoral roll. On this point the following issue was framed by this Tribunal as issue No. 2: "Whether the validity of an electoral roll can be challenged in an election petition?"

## Finding on Issue No. 2

Sri Jagdish Swarup appearing for the petitioner contended that a petitioner is entitled to satisfy an Election Tribunal that the electoral roll was not properly prepared. On the other hand Sri R. N. Basu appearing for the returned candidate urged that it is not open to an Election Tribunal to go behind the entries in an electoral roll. Section 7 of the British Ballot Act of 1872 states: "Every person whose name is on the register of voters for the time being in force shall be entitled to demand and receive a ballot paper and to vote; provided that nothing in the section shall entitle any person to vote who is prohibited from voting by any statute or by the common law of Parliament". In "Stowe v. Jolliffe" (30 Law Times, page 795) it was held that, the register of voters is conclusive after as well as at an election, except as to those persons who from some inherent or for the time irremovable quality in themselves had not the status of electors when they voted.

The statute law applicable in India is contained in R.P. Act, 1950, R.P. Rules, 1950 and R.P. Act, 1951. Section 28 of R.P. Act, 1950 confers power upon the Central Government to make rules for the preparation and publication of electoral rolls. R.P. Rules, 1950 have, been framed by the Central Government under powers conferred upon it by section 28 of R.P. Act, 1950. R.P. Rules, 1950 contain detailed instructions for the preparation and publication of electoral rolls. Under rule 9 of the said Rules, the Registration Officer has to preprae draft electoral rolls. Under rule 10 notice is issued inviting claims and objections. Rule 12 enables the Registration Officer himself to lodge claims. Notice of claims or objections is issued under rule 14. The Revising Authority has to hold an inquiry into claims and objections under rule 17. Rule 18(1) states: "The decisions of the Revising Authority shall be final. Every such decision shall be communicated to the Electoral Registration Officer who shall cause the electoral roll to be amended in accordance therewith". Rule 19 provides for final publication of electoral rolls. Rule 20 contains provision for revision of electoral rolls after final publication in special cases. Rule 22 deals with the annual preparation of electoral rolls. It is made clear in sub-rule (2) of rule 22 that, the provisions of rule 18 apply to the electoral rolls as annually revised. According to section 62 of R.P. Act, 1951, the right to vote is governed by entries in the electoral roll.

Sri R. N. Basu appearing for the returned candidate relied upon two cases decided under the old election law. In Bhagalpur case (Election Petitions by Jagat Narayan, Volume I, page 16) it was held that, the election court can only consider the question of personal, and not of material disqualifications. The jurisdiction conferred on the election court is necessarily limited by the definite provisions regarding the finality of the orders of the Returning Officer. The election court is, therefore, precluded from inquiring into the question of the respondent's possession of the qualification which entitles him to be entered in the electoral roll.

In "Mathura Das V. Lakshmi Narayan" (Election Petition by Jagat Narayan, Volume III, page 112), the question whether the electoral roll as revised by the Revising Authority is binding on the Election Commissioners was discussed at some length at page 119. It was held that, electoral roll as revised in accordance with the order of the Revising Authority is binding on the Election Commissioners, and they cannot go behind it in respect of qualifications of voters. The following passage from Pembroke Boroughs case was quoted with approval: "When it is said that the register is to be conclusive what is meant is that the errors in it

must stand. If it were always absolutely correct, there could be no importance in saying that the errors in it must stand. If it were always absolutely correct, there could be no importance in saying that it was to be conclusive. It seems to me that the policy of the legislature has from the time of the Reform Act of 1832 until the Ballot Act, been to make it necessary to raise all questions as to rights to vote in the Registration Court and to do this by preventing their being raised as any other time or in any other manner".

Sri Jagdish Swarup appearing for the petitioner referred to two recent decisions of Election Tribunals at Rewa and Kotah. In "Jagdish Prasad v. Gangadhar" (Gazette of India, No. 229, dated 12th September, 1953, Part II, Section 3, page 2885) it was found that, a certain notification issued by the State Government did not properly describe the extent of the President's delimitation order. The Election Tribunal at Rewa held that, the formation of a constituency and determination of its extent are very vital and important preliminary steps for purposes of elections. Non-inclusion of 13 villages gave a substantially incorrect idea of the constituency to all concerned including the petitioner. The result was that this part of the constituency remained uninformed. The question involved in that case was whether the petitioner was entitled to show that, a certain notification relating to delimitation was defective. The question of validity of the electoral roll as such did not arise in that case.

In "Laxmidatta v. Madanlal" (Gazette of India, No. 192, Part II, Section 3, dated 21st July, 1953, page 2471), issue No. 4 was whether the electoral roll can be questioned at the stage of the election petition. The Election Tribunal, Kotah, observed: "When the petitioners point to the two glaring or patent defects in the electoral roll firstly, as regards almost all of the women voters who, although on the roll, were disallowed to vote, owing to the misdescription of their names, and secondly, as regards some villages which according to them are improperly missing from the roll, they do not at least in case of their first objection, attack the alleged conclusiveness of the roll but rather wish to indirectly confirm it. Their second objection again, does not question the conclusiveness of the roll, but points to its incompleteness, in so far as, some villages, which should have been, but have not been included in the roll. Therefore, it is clear, that when we proceed to consider the electoral roll in the light of the two defects pointed out to us by the petitioners, we do not mean to interfere with the finality of the electoral roll but only desire to test its merits, and we have no doubt that we are competent to do so". The last sentence indicates that, although entries in the electoral roll were criticised, the Election Tribunal had no intention to question the finality of the electoral roll.

In support of his contention that entries in an electoral roll are conclusive, Sri R. N. Basu relied upon rule 18 of R.P. Rules, 1950, section 30 of R.P. Act, 1950 and section 62 of R.P. Act, 1951. Rule 18 of R.P. Rules, 1950, lays down that decisions of the Revising Authority shall be final. Parties are not agreed as to the extent to which entries in the electoral roll are to be regarded as final under this rule. The rule certainly means that, there is no further appeal from the decision of the Revising Authority. Sri Jagdish Swarup pointed out that under rule 20 changes are permissible even after final publication of electoral rolls.

Section 30 of R.P. Act, 1950 states: "No civil court shall have jurisdiction—(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency......" The heading of this section is: "Jurisdiction of civil courts barred". The section makes no reference to Election Tribunals. This Election Tribunal is not a civil court in the sense in which the word is used there, i.e., normal or General Courts for civil matters. So section 30 of R.P. Act, 1950 does not oust jurisdiction of this Tribunal to investigate the validity of the electoral roll.

Lastly, we have to consider section 62 of R.P. Act, 1951. This section deals with the right to vote. Section 62(1) states: "No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency". Sub-sections (2) to (5) enumerate cases where a person is not entitled to vote. The disability mentioned in sub-sections (2) to (5) may be referred to as statutory disqualification. Sub-sections (2) to (5) provide exceptions to general rule contained in sub-section (1). The rule with its exceptions may be thus stated. A person, whose name is not entered in the electoral roll is not entitled to vote. Again (subject to statutory disqualifications), a person, whose name is entered in the electoral roll, is entitled to vote in the constituency.

Sri Jagdish Swarup contended that the petitioner is entitled to challenge the electoral roll under section 100(2)(c) of Representation of the People Act, 1951. Section 100(2)(c) of the Act runs thus: ".....If the Tribunal is of opinion—.....(c) that the result of the election has been materially affected.....by

any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form, the Tribunal shall declare the election of the returned candidate to be void. In paragraph 5 of the present petition it has been alleged that, a number of rules, orders, directions and instructions were violated in the preparation of the electoral roll. Part (1) of paragraph 5 refers to certain sections of R.P. Act, 1950. Part (2) of paragraph 5 refers to certain rules of R.P. Rules, 1950. Parts (3), (4) and (5) of paragraphs 5 deal with certain instructions issued by the Chief Electoral Officer, U.P. Thus, there is no complaint about violation of the Constitution or of R.P. Act, 1951. The alleged violation is confined to R.P. Act, 1950, R.P. Rules, 1950, and certain instructions. The question, therefore, arises whether R.P. Act, 1950 and R.P. Rules, 1950, are covered by the expression "any other Act or rules relating to the election" used in section 100(2) (c) of R.P. Act, 1951.

In "Ponnu Swami's case" (A.I.R. 1952, Supreme Court, 64) their Lordships of the Supreme Court had occasion to discuss the scope of the word "election" used in Part 15 of the Constitution. In that case the question arose whether a High Court acting under Article 226 of the Constitution has got the power to issue a writ of certiorari to quash the order of the Returning Officer rejecting a nomination paper. Their Lordships observed: "It seems to me that the word 'election' has been used in Part 15 of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of election" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part 15 including Article 329 (b)". The point decided in that case was that, the stage of nominations is included in the term 'election'. There was no occasion for deciding the question whether certain stages prior to the nomination itself are also included in the term 'election'.

According to the preamble, the R.P. Act, 1950 is "an Act to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of election to,...., the qualifications of voters at such elections, the preparation of electoral rolls.....and matters connected therewith". R.P. Rules, 1950, have been framed under section 28 of R.P. Act, 1950. The preamble quoted above suggests that R. P. Act, 1950 does not directly deal with elections. The provisions of the Act of 1950 are confined to certain preliminary stages such as delimitation and preparation of the electoral roll. It is R.P. Act, 1951, which makes detailed provisions about the actual poll. We are, therefore, inclined to think that R.P. Act, 1950 and R.P. Rules, 1950, are not covered by the expression "any other Act or rules relating to the election" used in section 100(2)(c) of R.P. Act, 1951. In pargaraph 4 of the present election petition it has been alleged that thousands of persons possessing the necessary qualifications were left out from the electoral roll. We are prepared to accept that, if thousands of names were wrongly omitted from the electoral roll as alleged, that fact was likely to have material effect of the result of the election. But under section 100(2)(c) of R.P. Act, 1951, a petitioner has to prove further that there was non-compliance with the provisions of the Constitution or of this Act, etc. So, even if the petitioner can prove facts alleged in paragraphs 4 and 5 of the petition, the case will not fall under section 100(2)(c) of R.P. Act, 1951.

According to the petitioner, thousands of voters who were either dead or not living in Allahabad were included in the electoral roll. Further, thousands of persons possessing the necessary qualifications were left out from the electoral roll. These facts have been denied by returned candidate. If we proceed to try the issues of fact raised under paragraph 4 of the petition, we shall have to record columinous evidence. The law of election could not have intended that an Election Tribunal should perform the work that ought to have been done by the Registration Officer and the Revising Authority.

Sri Jagdish Swarup is right in his contention that R.P. Act, 1950, R.P. Rules, 1950 and R.P. Act, 1951 do not lay down in so many words that an electoral roll shall be conclusive during the hearing of an election petition. But the combined effect of rule 18 of R.P. Rules, 1950 and section 62 of R.P. Act, 1951, is to make the electoral roll binding even upon an Election Tribunal. Sub-sections (2) to (5) of section 62, R.P. Act, 1951, deal with statutory disqualifications. But apart from statutory disqualifications, entries in an electoral roll are binding. R.P. Rules, 1950, provide an elaborate machinery for filing claims and objections are disposed of by an independent authority. Rule 20 permits revision of the electoral roll after its final publication. A person who did not file any claim or objection, or having filed a claim or an objection failed to support it before the Revising Authority, cannot be permitted to raise the same point before the Returning Officer or the Election Tribunal. Much less is another person competent to raise that point before the Election Tribunal. The

cases decided in England and in India have been mostly to the effect that the electoral roll is binding on the Election Tribunal. There is nothing in R.P. Act, 1951 to suggest that the legislature intended to alter that legal position.

Sri Jagdish Swarup appearing for the petitioner, however, contends that the use of the word 'final' in Rule 18(1) of the R.P. (Preparation of the Electoral Rolls Rules, 1951, makes the decision of the Revising Authority final only as regards the actual parties to the decision and not as regards persons not parties to it. Secondly, it is final only as regards the Presiding Officer and other officers working at the poll, but not as regards the Election Tribunal. And, thirdly, that the decision of the Revising Authority is final but it is only when there is one such in existence. But that if there is none (because there was no claim or objection) then the sub-rule has no application and cannot oust the jurisdiction of the Election Tribunal to scrutinize the electoral roll of the constituency, for no rule or law in India makes the electoral roll "conclusive" as is the case in England. In other words, this last contention of his amounts to this that even if the rule 18(1) lays down a principle of resjudicata binding on the Election Tribunals, its language is restricted in its scope and cannot be stretched and should not be stretched, by interpretation, so as to make it lay down a principle of constructive resjudicata also.

We are, however, unable to accept this contention and our reasons are the following:—

There are some well-recognized cardinal rules of interpretation of statutes, two of which are germane to our present discussion; the one, in certain circumstances, makes a prescribed court or authority "exclusive" and the other makes the prescribed remedy "exclusive".

- (i) When new rights or liabilities have been created by a statute and jurisdiction has been conferred on a specific court for the investigation of matters, which may possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary civil courts (and we may observe here that in the matter of elections, Election Tribunals take the place of ordinary civil courts).
- (ii) When new rights have been created and a remedy has been prescribed for their breach by the same Act, then that remedy is the "exclusive" remedy. In Maxwell's Interpretation of Statutes, this rule has been put thus:—"If the statute which creates the obligation, whether private or public, provides in the same section or passage a specific means or procedure for enforcing it, no other method than that thus provided can be resorted to for that purpose". (9th English, 1946, Edn. p. 395).

In Mr. Jagdish Swarup's own book on "The Interpretation of Statutes", the first rule is expressed thus (on page 352-3 of 1st Edn., 1952); "Where a special Tribunal out of the ordinary courses is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as expressly provided or necessarily implied, that Tribunal's jurisdiction to determine those questions is exclusive". In support of this proposition he has cited over a dozen cases from almost all the High Courts in India, including the two we are just considering in detail below.

Rule 1 was recognized and applied in "(Maharaja) Rameshwar Singh v. Secretary of State for India" (I.L.R. 34, Calcutta, p. 470, at pp. 484-5). This case was approved and followed by a Bench of the Allahabad High, Court in "Ram Ran Vijaya Prasad Singh v. Sarju Singh" (I.L.R. 1946, Allahabad, 733—at the bottom of page 735)—(I.L.R. 1947, Allahabad, p. 385). Rule 2 has been recognized and followed by the courts in India including the Allahabad High Court, but we will take only one case, viz. "Jyoti Prasad Upadhya v. Amba Pd." (1933 Allahabad Law Journal, 303) where Iqbal Ahmad and Kisch, JJ. observed: "It is well-settled that where the statute which creates the right also prescribes a particular remedy for the infringement of that right, that remedy and that remedy alone can be pursued by the person complaining of the infringement of the rights for the redress of the illegal wrong".

For this proposition they relied upon a previous Full Bench case of their own court, *i.e.* "Abdur Rahman v. Abdur Rahman" (I.L.R. 47, Allahabad, 513)—(23 A.L.J. 385)—(A.J.R. 1925, Allahabad, 380).

The 1933 case arose out of an election under the U.P. District Boards Act, 1922 (U.P. Act X of 1922) and the 1925 case out of an election under the U.P. Municipalities Act, 1916 (U.P. Act II of 1916).

In the former, the plaintiff in the action was elected a member of the Agra District Board, but it was after the election of the Chairman of the Board had been held and declared, in which he could not take part. So he filed the suit, which gave rise to the ruling, against the newly elected Chairman for a declaration that his (defendant) election as President was invalid, for the Local Government had no right to fix a date for the election of the Chairman of the Board, under section 35A of the Act, before the results of the election of all the members had been announced. After referring to section 35(3) of the District Boards Act, which lays down the procedure for challenging the election of the Chairman, the Bench observed: "It cannot be doubted that the right of a member to vote in the election of a Chairman is the creation of the District Board Act, and that Act prescribes that the dispute as to the validity of an election of a Chairman is to be decided by a Tribunal appointed by the Local Government. It follows, therefore, that "except so far as otherwise expressly provided, the Tribunal's jurisdiction to determine those questions is exclusive", "and it is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence....."

They then relied on the principle first quoted and held that the jurisdiction of the Civil Court to try the suit was immediately barred.

We have selected this case as it was a suit by a stranger and not by a defeated candidate for the Chairmanship questioned in the suit.

The Full Bench case of 1925 (47 Allahabad, 513) had arisen out of a general election for the members under the Municipalities Act. The Full Bench referred to sections 19 to 27, which provide for a machinery for the filing and adjudication of election petitions and to sections 164 and 321, which bar suits and proceedings other than those prescribed by the Act, and then observed:—"It is quite true that it is not stated in so many words that there shall be no right of suit. It is also true that in two places in the Act, sections 164 and 321, there are provisions expressly barring the right of suit in particular matters. But the whole scheme of sections 19 to 27 clearly implies an attempt that the election of any person as a member of a Board shall only be challenged by an election petition presented in accordance with the Act".

In the end, for the above reasons, the Full Bench held that there was no right of suit, although there was no express prohibition or bar in the Act.

We have selected this case because here the scheme of the Act (the election chapter of the Municipalities Act) was held to bar the right of suit by implication. In the case before us, the scheme of the Act (the Representation of the People Act, 1951) and the Rules thereunder, is much more eleborate and so the ratio resident of the Full Bench case should apply all the more to the facts of the present case.

Hence we are of opinion that the order of the Revising Authority cannot be questioned before the Election Tribunal by the person who has raised a claim or objection before the Revising Authority and lost, much less by a stranger to the right like the present petitioner.

Now remains the question (which may be termed, for the sake of convenience, "analogus to constructive resjudicata") whether a claim or objection, which has never been put forward, tried and determined by the Revising Authority, can be put forward before the Election Tribunal. The right to vote, or franchise, as it is called, is a creature of the statute which has conferred a special privilege and a right on certain citizens of the State. If some citizens did not want to enjoy or to take the benefit of that privilege, they cannot complain, for they themselves had either not desired to exercise that privilege or had neglected to take suitable steps to be able to exercise it, by having their names entered in the electoral roll of their constituency, in the manner prescribed by the relevant rules. Since it is a privilege conferred upon an individual citizen as such, a stranger cannot complain that some of his neighbours or fellow-citizens, who have neglected to get themselves registered is the electoral roll, have been deprived of the privilege of franchise by the omission of their names is the electoral roll of the constituency. A complaint regarding a privilege can be made only by the person deprived of a privilege and not by a third person. Hence in our view the petitioner has no right, and cannot be heard, to complain

that certain of the citizens of his constituency have not been registered in the electoral roll, though they were entitled to be so registered, and that the electoral roll of the constituency is invalid for that reason.

Our finding on issue No. 2 is, therefore, this. The validity of an electoral roll cannot be challenged in an election petition except as provided in sub-sections (2) to (5) of section 62 of R.P. Act, 1951.

(Sd.) V. G. OAK, I.C.S., Chairman.

(Sd.) BABU RAM AVASTHI, Member.

The 16th December, 1953.

(Sd.) N. N. Mukerji, Member.

Sarvasıı Jagdish Swarup, Sripat Narain Singh, Radhey Shyam Misra and M. P. Shukla represented the Petitioner while the Respondent No. 1 was represented by Sarvasıı R. N. Basu, Balran Lai Srivastava, İndra Singh and others.

[No. 82/12/53/16845.]

K. S. RAJAGOPALAN, Asstt Secv.